

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL
77-5025

B
P/S

United States Court of Appeals
FOR THE SECOND CIRCUIT



In the Matter of
SEAFARER FIBER GLASS YACHTS, INC.,
Debtor-Appellant,

THE STATE OF NEW YORK, DEPARTMENT OF TAXATION
AND FINANCE, SALES TAX BUREAU,
Claimant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

JOINT APPENDIX

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PAGINATION AS IN ORIGINAL COPY

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WITNESSES:

Brian B. Acworth-for Debtor-Direct	30a, 47a, 55a
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EXHIBITS:

Exhibit II-Certification of Out-of-State Residence-	printed 59 a	Offered 57a
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DOCKET ENTRIES- BANKRUPTCY COURT

Last First Middle SEAFARER FIBER GLASS YACHTS, INC.				CHAPTER OR SECTION XI-Sec. 322		CHECK IF ☒ Voluntary ☐ Involuntary ☐ Fee paid in full ☒ Corporation	
13-1921851				DATE PETITION FILED 11/14/74		DATE CLOSED	
ADDRESS OF BANKRUPT/DEBTOR (Number and Street) 760 Park Avenue				DISCHARGE ☒ Granted ☐ Denied ☐ Waived		OCCUPATION ☒ Farmer ☐ Employee ☐ Professional ☐ Other (Non-business) ☐ Merchant ☒ Manufacturer ☐ Other (Business)	
CITY ZONE COUNTY STATE HUNTINGTON SUFFOLK N.Y.				DATE DISCHARGED		PETITION DISMISSED? ☐ YES ☐ NO	
				NAME OF DISTRICT JUDGE		CHAPTER UNDER WHICH CASE WAS PENDING WHEN DISMISSED	
				NAME OF BANKRUPTCY JUDGE WILLIAM J. RUDIN			
ATTORNEY FOR BANKRUPT OR DEBTOR ☒ NAMES AND ADDRESSES (SAMUEL MASIA & BATTLE, FOWLER, LIDSTONE, JAFFIN, PIERCE & KHEEL-co-attys 2 W. 45th St., -280 Park Ave. New York, N.Y. (661-3654) (YU 6-8330))							
ATTORNEY FOR PETITIONING CREDITORS ☒ 714 911-1111							
RECEIVER ☒							
ATTORNEY FOR RECEIVER ☒							
TRUSTEE ☒							
ATTORNEY FOR TRUSTEE ☒							
CHANGES OF PRINCIPALS							
DATE		PROCEEDINGS					
11/14/74		Debtor's Petition, Exhibit A, Approximate Summary of Assets & Liabilities as of 10/31/74, List of Creditors, Affidavit to Rule XI-2, Corporate Resolution filed and referred to: Bankruptcy Judge WILLIAM J. RUDIN. (1)					
11/14/74		Copies mailed to S.E.C., S.T. & D.I.R. Original and copy sent to Judge-11/15/74. 76					
11/19/74		Informal held					
Meeting of Creds.-		12/23/74 - 10:30 A.M. (rec 11/18/74)					
app.-----		2/24/75					
Appraiser		George P. Tobler-139 E. Main St. Smithtown, N.Y. 268-20					

FORM BK 74
OCT. 1973

UNITED STATES DISTRICT COURTS
BANKRUPTCY DOCKET

☒

CHECK THIS BOX IF FILING FEES WERE PAID IN FULL AT THE TIME OF FILING

Docket Entries- Bankruptcy Court

DATE	PROCEEDINGS
11/19/74	Mailed (13) notices of Indemnity Hrg. (11/25/74-10:30 A.M. & filed certf. of Mailing (2)
11/19/74	rec. pet. & signed order for retention of attys. for debtor in possession (3)
11/19/74	Signed order authorizing debtor in possession to operate business & authorizing wages, salaries to officers-designating depository, etc. - 3 cc given to Atty. for debtor - copy to Sec. of Treasury (4)
** 11/18/74	rec. pet. & signed order - restraining creditors from proceeding with actions (5)
11/19/74	Signed order for payment of Federal Taxes- copies given to Pres. Brian B. Acworth, debtor (6)
11/19/74	signed order of indemnity to pay court reporter \$150.00 - copies to debtor, at for debtor & court reporter (7)
11/25/74	Indem. hrg; Adj. to December 16, 1974 at 11:00 AM.
12/11/74	Mailed (293) notices of meet of Creds. & summary of liabilities & Assets of fixing date to determine dischargeability of debts & filed certf. of mailing - (12/23/74 - 10:30 A.M.) (7)
12/16/74	Adj. inde; Adj. to December 23, 1974 at 10:30 AM.
12/19/74	rec scheds, statement of affairs, executory contracts, copy Sec of Treas, clk off, Dist Director of Int. Rev and Security Exchange Comm. (8)
*12/6/74	recd. weekly statement #1 period from 11/15/74 to 11/22/74 (9)
*12/6/74	recd. weekly statement #2 period from w/e 11/29/74 (10)
*12/16/74	recd. weekly statement #3 w/e 12/6/74 (11)
*12/16/74	recd. weekly statement #4 w/e 12/13/74 (12)
12/23/74	Meet. of creds; sec. 376 hrg; Adj. to Feb. 10, 1975 at 10:30 AM; Creds. comm. nominated; Albert Sacklow, Tenta. Trustee; Adj. indem; Adj. to Feb. 10, 1975 at 10:30 AM.
12/27/74	rec pet and signed order time within which defendant Mid Island Non Ferrous Foundry Corp. to answer complaint be shortened so that the answer to complaint shall be interposed within seven days after service upon said defendant and trial proceedings shall be held not later than ten days thereafter. copy ret'd (13)
12/27/74	zom rec complaint from attys for plaintiff Seafarer Fiber Glass Yachts Inc. re turn over re patterns -re Mid Island Non Ferrous Foundry Corp. (copy ret'd (14)
12/27/74	issue signed summons and notice of trial-re complaint re turn over-re patterns-re Mid-Island Non Ferrous Foundry Corp. (answer by January 6, 1975) trial hrg for January 15, 1975 at 10:30AM) copy ret'd (15)
1/15/75	Trial hrg re complaint re T.O. patters Mid-Island Non Ferrous Foundry Corp.; Adj to January 22nd at 10:30 am.

Creds. Comm- Nominated

Tenta. Trustee- Albert Sacklow, P. O. Box 630, Mineola, NY 11501

Cert Public Accountants -1515 Bway, New York, N.Y.-Clarence Rainess & Co,

3a
Docket Entries-Bankruptcy Court

DATE	PROCEEDINGS
*11/22/74	rec affidavit of mailing for payment of Federal Tax (16)
11/25/74	rec pet and signed order extending time to file schedule etc is hereby extended for a period of (10) days from November 29, 1974 to December 9, 1974 (17)
12/6/74	rec pet and signed order extending time to file schedule etc is hereby extended for a period of (10) days from December 9, 1974 to December 19, 1974 (18)
12/23/74	signed order appointing cred comm and election of Albert Sacklow as tent tr is hereby approved etc (19)
12/31/74	rec pet and signed order authorizing retention of, comm to creds comm-re Otterbourg, Steindler, Houston & Rosen and allowed compensation in accordance with provision of Bankruptcy Rule 11-29-C copy ret'd (20)
1/8/75	rec pet and signed order authorizing retention of accountants to official creds comm re Clarence Rainess & Certified Public Accountants copy ret'd (21)
1/9/75	rec affidavit of service and signed order and stip extending time to answer re complaint and trial to January 22, 1975 at 10:30AM <i>copy ret'd</i> (22)
1/22/75	Adj. trial hrg. re complaint re T.O. Patters, Mid-Islar Non Ferrous Foundry Corp; Judgment to be settled. Defat of Fedt. noted.
2/10/75	Adj/ meet. creds; adj. sec. 376 hrg; adj. indem; adj. March 10, 1975 at 10:30 AM.
3/10/75	Adj. meet. creds; adj. sec. 376 hrg; adj. indem; Adj. April 21, 1975 at 10:30 AM.
*1/22/75	rec pet and signed order debtor is authorized to enter into agreement with John Paul Arnone for purchase of a Seafarer 22 Yacht etc <i>copy ret'd</i> (23)
2/24/75	rec pet and signed order debtor is authorized to amende Sched A-3 re Lawrence J. Ragno etc. copy clk off 2cc given \$2.00 clk off \$10.00 ck of (24)
*1/29/75	rec pet and signed order debtor is authorized to pay t warranty claims etc. copy ret'd (25)
4.21/75	Adj. meet. creds; adj. sec. 376 hrg; adj. indem; adj. May 19, 1975 at 10:30 AM.
5/19/75	Adj. meet. creds; adj. sec. 376 hrg; adj. indem; Adj. t June 23, 1975 at 10:30 AM. Plan to be filed by 6/23/
6/23/75	Adj. meet. creds; adj. sec. 376 hrg; adj. indem; adj plan; Adj. to August 6, 1975 at 10:30 AM.
*4/21/75	rec pet and signed order debtor authorized to pay warr claims etc copy given (26)
7/3/75	rec pet and signed order authorizing transfer of funds for purchase of an interest bearing certificate of depo re \$100,000.00 re Manufacturers Hanover Trust Co. etc lcc ret'd (chg to est per Jud (27)
8/6/75	Adj. meet. cred; adj sec 376 hrg; adj indem;; Adj to Sept. 8th at 10:30 am.

Docket Entries-Bankruptcy Court

DATE	PROCEEDINGS
6/22/75	rec petnand signed order for appointment of appraiser re real prop etc. copy to Sam Masia, copy to appraiser (notices and forms sent) (Tobler) (28)
9/8/75	Adj. meet. creds; adj. sec. 376 hrg; adj. indem; adj. to Oct. 29, 1975 at 10:30 AM,
10/2/75	rec pet and signed order ^{order} authorizing debtor in possession to use a portion of proceed of certificate of deposit and purchase new certificate in reduced amount etc. (29)
10/29/75 10/29/75	Adj/ meet. creds; adj. sec. 376 hrg; adj. infem; Adj. to December 15, 1975 at 10:30 AM.
11/11/75	recd appraisers application for allowance -Oath- report and affidavit Geo Tobler fee \$1,000. (30)
12/3/75	signed order fixing and ordering compensation to be paid appraiser cc to debtor-debtor co-counsel copy to appraiser (31) ✓
12/15/75	Adj. indem; adj. meet. creds; adj. sec. 376 hrg; Adj. to Jan. 14, 1975 at 10:30 AM.
1/6/76	Signed order restricting use of certificate of deposit and amending prior order. Copy ret'd. (32)
1/6/76	rec'd application and signed order restricting use of certificate of deposit and amending prior order. copy ret'd. (32)
1/14/76	Adj. indem; adj. sec. 376 hrg; adj. meet. creds; Adj. to February 9, 1976 at 10:30 AM.
2/9/76	Adj. Indemnity; adj. sec 376 Hearing adj. AFM adj. to March 17, 1976 at 10:30 A.M.
3/9/76	rec pet and notice of motion for order to amend scheds A-3 to delete and eliminate creds etc (March 17, 1976 at 10:30AM) (33)
3/17/76	Adj. indem; adj. sec. 376 hrg; adj. meet. creds; Adj. to April 14, 1976 at 10:30 AM. Motion to amend Sched A-3 re Delete & Eliminate creds. etc; Motion granted on default. Submit order.
4/14/76	Adj. indemnity; Adj. sec 376 hrg; adj. meeting of cred. Adj. to April 26, 1976 at 10:30 A.M.
*10/15/75	rec pet and signed order until further order of this court Carroll H. Geldmacher III etal from continuing action action against Seafarer Fleet and the debtor etc copy ret'd (34)
11/14/75	rec pet and signed order staying action -re Raymond Schwenke etc lcc ret'd (35) ✓
11/18/75	rec pet and signed order debtor is authorized to pay warranty claims etc. copy ret'd (36)
1/22/76	rec pet and signed order reducing salary salary of Brian B. Acworth from \$673.08 wk to \$548.08 per wk (37)

5a
Docket Entries-Bankruptcy Court

DATE	PROCEEDINGS
4/26/76	adj. indem; adj. sec. 376 hrg; Adj. meet. creds; adj. to May 10, 1976 at 10:30 A.M.
5/10/76	rec pet and signed osc-re Charles S. Gay -to show cause to reject executory contract, etc (May 24, 1976 at 10:30 copy ret'd (38)
5/10/76	adj. indem; adj. sec. 376 hrg; adj. meet. creds; adj. to June 14, 1976 at 10:30 A.M.
5/10/76	rec plan of arrangement, copy Sec of Treas (39)
5/19/76	Mailed (344) notices of adj meet of creds & plan hrg June 14, 1976 - 10:30 AM June 21, 1976 - appl to confirm June 28, 1976 - 10:30 AM - conf: objs & fees & filed certificate of mailing (40)
5/24/76	osc to reject executory contract etc. argued and submit briefs by June 7, 1976 and all papers by June 14, 1976
*5/21/76	rec affidavit of service-re osc (41)
5/24/76	signed order motion granted to amend scheds A-3 to elim eliminate and delete therefrom the claimants listed in Sched A-3 under Claims for down payments on purchase contracts etc-re Richard Calvo etc copy ret'd copy clk off (42)
5/24/76	rec affidavit opposing order to show cause to reject executory contract, etc from atty for respondent etc (43)
5/24/76	rec pet and signed order to show cause to turn over prop re Robert G. Scharf (June 14, 1976 at 10:30AM) copy ret'd (44)
5/24/76	rec pet and signed osc re Norbert K. Schau-re rejecting and cancelling certain executory contract etc (June 14, 1976 at 10:30AM) copy ret'd (45)
6/1/76	rec pet and notice of motion to amend scheds A-3 to delete Howard R. Keough as claimant (June 14, 1976 at 10:30AM) (46)
6/4/76	rec pet and notice of motion-to expunge and disallow claim of Lawrence J. Ragno (June 14, 1976 at 10:30AM) (47)
6/4/76	rec pet and notice of motion-to expunge and disallow claim of Muller Jordan Herrick Inc. (June 14, 1976 at 10 (48)
6/14/76	adj. indem; adj. sec. 376 hrg; adj. meet. creds; plan hr; adj. to June 23, 1976 at 10:30 A.M. order show caus Norbert K. Schau re: rejecting & cancelling certain executory contract etc. granted on default, submit order. order show cause Robert G. Scharf re: turn over of Prop etc. adj. to June 23, 1976 at 10:30 A.M.

FPI MI--3-13-69-75M-3559

~~copy ret'd~~ (57)

[illegible]

Docket Entries-Bankruptcy Court

DATE	PROCEEDINGS
6/23/76	signed intermediate order based upon debtor motion re claim #97 Muller Jordan Herrick in sum of \$26,081.05 etc. copy ret'd (58)
6/23/76	signed order motion granted and that Sched A-3 of sched of assets and liabilities filed by debtor is hereby amended so as to delete and eliminate Howard R Keough listed in undetermined amt based upon an action for specific performance or in alternative for damages in sum of \$39,300 without prejudice to letter claim filed by Howard R. Keough for damages in sum of \$850.00 and without prejudice to debtor to file objections if any, to said claim copy ret'd copy clk off (58)
7/2/76	signed order granting motion to amend scheds A-3 of Scheds of assets and liabilities -to exclude and delete Associated Litho & Letter Service Inc. etc. copy ret'd copy clk off (59)
7/2/76	signed order granting motion to amend sched A-3 of scheds of assets and liabilities by excluding and deleting Thule Construction Co. Inc. copy ret'd copy clk off (60)
7/2/76	signed order motion is hereby granted and that claim #1 Robert H. Fisher in sum of \$5,110.75 be and same hereby expunged and disallowed copy ret'd (61)
7/16/76	rec pet and notice of motion objs to claim #65 by Donald W. Porter (July 26, 1976 at 10:30AM) (62)
7/21/76	rec pet and notice of motion- busx objs to claim re Erik Cripps, d/b/a Biofilm (July 26, 1976 at 10:30AM) (63)
7/26/76	adj. indem; adj. sec. 376 hrg; adj. meet. creds; adj. to August 9, 1976 at 10:30 A.M. adj. order show cause re: Robert G. Scharg re: turnover prop; etc. withdrawn by debtor. adj motion to expunge & disallow claim of state of NY debt rwa of taxation & finance sales tax bureau adj. to August 9, 1976 at 10:30 A.M. adj. conf; adj. obj: to conf; adj. to August 9, 1976 at 10:30 A.M. motion obj: to claim #65 re: Donald W Porter motion granted, submit order. motion objs to claim of Erik Cripps d/b/a Biofilm adj to September 22, 1976 at 11:00 A.M.
*7/19/76	rec affidavit in opposition to motion returnable on 7/2 objs to claim of Erik Cripps d/b/a Biofilms from my fo claimant (64)
7/27/76	Signed order (4 pages) that appl of debtor to reject & cancel exec contract dated 11/20/73 between debtor & respondent Chas. S. Gay be granted; also motion granted that claimant shall have 60 days from date of this order to file its claim. Photocopies to debtor's atty & co-atty & to claimant's atty (65)

Docket Entries-Bankruptcy Court

DATE	PROCEEDINGS
8/2/76	rec pet and notice of motion to expunge claim re Howard R. Keough (August 9, 1976 at 10:30AM) (66)
8/2/76	rec pet and notice of motion-objs to claim #92 John Paul Arnone (August 9, 1976 at 10:30AM) (67)
7/16/76	recd certification of acceptances to plan of arrangement with acceptances attached (68)
8/9/76	adj. indem; adj sec. 376 hrg; adj motion to expunge & disallow claim of state of NY dept of Taxation & Finance sales Tax Bureau adj conf; adj objs. to conf; adj to August 23, 1976 at 10:30 A.M. motion to expunge claim re: Howard R. Keough granted on default, submit order. motion objs to Claim #92 John Paul Arnone. granted on default, submit order
8/23/76	Adj.a indem; adj. sec. 376 hrg;adj. motion to expunge & disallow claim of NYS, Dept. of Taxation & Finance Sales Tax Bureau; adj. conf; adj. objs. to conf; Adj. to September 15, 1976 at 10:30 AM.
9/15/76	adj indem; adj sec 376 hrg; adj motion to expunge & disallow claim of NYS Dept of Taxation & Finance Sales Tax Bureau; adj conf; adj objs. to conf; adj to October 6, 1976 at 10:30 A.M.
9/22/76	adj motion objs to claim of Erick Cripps d/b/a Biofilm adj to October 20, 1976 at 11:00 A.M.
10/6/76	adj indem; adj sec 376 hrg; adj motion to expunge & disallow claim #115 - NYS Dept of Taxation & Finance Sales Tax Bureau, adj conf; adj objs. to conf; adj to November 8, 1976 at 10:30 A.M.
10/20/76	adj motion objs to claim of Erik XXXXXX Cripps d/b/a Biofilm. reduced by consent to \$4000 order to be submitted by Mr. Masier.
*8/6/76	signed order withdrawing turnover motion copy ret'd (69)
8/6/76	signed order granting motion that claim #65 Donald W. Porter sin sum of \$11,959.92 is hereby expunged and disallowed. copy ret'd (70)
9/15/76	signed order granting motion claim #92 by John Paul Arnone in sum of \$2400.00 be and same is hereby expunged and disallowed. copy ret'd (71)
9/15/76	signed order granting motion claim of Howard R. Keough sum of \$850.00 is hereby expunged and disallowed. copy ret'd (72)
11/8/76	adj indem; adj sec 376 hrg; adj motion to expunge & disallow claim #115 NYS Dept of Taxation & Finance Sales Tax Bureau; adj conf; adj objs to conf; adj to December 8, 1976 at 10:30 A.M.

Docket Entries-Bankruptcy Court

DATE	PROCEEDINGS
*1/22/75	Rec test taken 12/16/74 re adj hrg indemnity (73)
*2/5/75	Rec test taken 12/23/74 re adj indem hrg, meet creds (74)
*2/19/75	Rec test taken 1/22/75 re hrg complaint re Mid Island Non Ferrous Foundry re turnover (75)
*3/5/75	Rec test taken 2/10/75 re adj indem, meet creds, Sec 376 (76)
*8/20/75	Rec test taken 4/21/75 re adj Indem, meet creds, Sec 376 (76)
*8/20/75	Rec test taken 5/19/75 " " " " " " (76)
*7/1/76	Rec test taken 5/10/76 re " " " " " " (76)
*7/22/76	Rec test taken 5/24/76 re OSC reject exec contract.
*8/12/76	Rec test taken 6/14/76 re adj indem, meet creds, Sec 376 plan hrg, osc Norbert Schau re reject exec contract, osc Robert G. Scharf re turnover property (76)
*8/25/76	Rec test taken 6/23/76 re adj indem, Sec 376, meet creds plan hrg, osc Robert Scharf re turnover, motion for order amend sched A-3 re Thule Construction, motion to expunge cl NYS Tax, motion re Assoc Litho, motion re objs to claim #15 re Robert Fisher (82)
*9/14/76	Rec test taken 7/26/76 re adj indem, Sec 376 hrg, meet creds, osc Robert Scharg re turnover, adj motion expunge cl NYS Tax, adj conf, objs to conf, motion objs cl #65 re Donald Porter, motion objs cl Erik Cripps (8)
*10/15/76	Rec test taken 8/9/76 re adj indem, adj Sec 376 hrg, plan accepted 7/16/76, adj motion expunge & disallow cl NYS Tax, adj conf, objs to conf, motion expunge cl Howard Keough, motion objs cl #92 John Paul Arnone, (8)
*11/9/76	Rec test taken 9/15/76 re adj indem, adj Sec 376, adj motion expunge & disallow cl NYS Tax, adj conf, objs cc (8)
11/22/76	Rec test taken 9/22/76 re adj motion objs to cl Erik C (8)
*12/16/76	Rec test tkn 11/25/74 re indem hrg (8)
12/8/76	adj indem; adj sec 376 hrg; adj motion to expunge & disallow claim #115 NYS Dept of Taxation & Finance Sal Tax Bureau; adj conf; adj objs to conf; adj to January 17, 1977 at 10:30 A.M.
1/17/77	adj sec 376 hrg; adj conf; adj objs to conf; adj to March 14, 1977 at 10:30 A.M. adj motion to expunge & disallow claim #115 NYS Dept of Taxation & Finance Sal Tax Bureau. Proceeded with hrg & Marked submitted. Briefs by February 28, 1977 and reply by March 14, 1977
3/14/77	adj sec 376 hrg; adj conf; adj objs to conf; adj to April 25, 1977 at 10:30 A.M.
*12/2/76	Rec test taken 10/6/76 re adj indem; adj Sec 376; adj motion to expunge & disallow cl #115 NYS Dept Taxation; adj conf; adj objs to conf (8)
*12/13/76	Rec test taken 11/8/76 re adj indem; adj Sec 376; adj motion to expunge & disallow cl #115 NYS Dept Taxation; adj conf; adj objs to conf
*2/15/77	Rec test taken 1/17/77 re adj Sec 376; adj motion to expunge & disallow cl #115 NYS Dept Taxation; adj conf; adj objs to conf

Docket Entries-Bankruptcy Court

DATE	PROCEEDINGS
*11/8/76	signed order reducing claim of Eric Cripps doing business as Biofilms copy ret'd (91)
1/17/77	rec affidavit of service re claim re N.Y. Dist Office Dept of Taxation and Finance (92)
4/25/77	adj sec 376 hrg; adj conf; adj objs to conf; adj to May 25, 1977 at 10:30 A.M.
4/28/77	Recd memorandum of law from Louis J. Lefkowitz re Claim State of NY Dept of Taxation and Finance (93)
5/17/77	Signed decision & order (9 pages) re claim State of NY, Dept of Taxation & Finance, Sales Tax Bureau - debtor entitled to tax credit or reduction of sales tax claim for all sales made to nonresidents; also State Tax Comm to re-compute tax, if any, owing by debtor for sales made within 3 years of filing of pet to nonresidents. An amended claim, if any, shall be filed by State Tax Comm for any tax found to be due to it by debtor within 60 days from date & upon failure to do so it shall be deemed to have no claim against debtor for sales taxes. Copies to Battle Fowler Lidstone Jaffin Pierce & Kheel & Samuel Masia, co-attys for debtor & to Louis J. Lefkowitz, att: J. Trubee Miller of counsel, NYS (94)
5/25/77	adj sec 376 hrg; adj conf; -adj objs to conf; adj to June 20, 1977 at 10:30 A.M.
5/25/77	Recd notice of appeal from attry for claimant re NYS Dept of Taxation & Finance, Sales Tax Bureau (re #94) copy to Samuel Masia, Co-attry for Debtor, copy to Battle, Fowler, Lidstone, Jaffin, Pierce & Kheel Esqs. attrys for Debtor \$10.00 clks office (95)
5/31/77	Recd Designation and Statement from Attry Louis J. Lefkowitz re NYS Dept of Taxation and Finance (96) Sales Tax Bureau (re order 5/17/77)
6/2/77	Recd appellee's designation of additional papers to be included in record of appeal re (order 5/17/77) (97)
*3/3/77	recd Debtor's Post Hearing Memorandum (98)
*5/10/77	recd Debtor's Reply Memorandum (99)
6/9/77	Given to Clerks office at Westbury, the record on appeal with the following-95-96-cl 144-50-92-90-94-cl 115-88- and filed cert of mailing-copies mailed to S.Masia-Atty Genl-Battle Fowler etal= (100)

DOCKET ENTRIES-DISTRICT COURT

77-0-1

DEBTOR/DEBTOR		CHAPTER 11 SECTION		CHECK	
FIRST MIDDLE LAST FIVE GLASS YACHTS, INC.		A-3, 3-2		☒ Debtor ☐ Creditor ☐ Other	
DATE PETITION FILED		DATE CLOSED		☒ Discharge ☐ Other	
DISCHARGE		☒ Granted ☐ Denied ☐ Waived		☒ Other	
DATE DISCHARGED		DATE DISMISSED		☐ YES ☐ NO	
NAME OF DISTRICT JUDGE		NAME OF BANKRUPTCY JUDGE		☐ Other (List)	
ZONE COUNTY STATE		NAME OF DISTRICT JUDGE		☐ Other (List)	

AND ADDRESSES
 151-3654) 2 W. 45th St., -330 Park Ave. N.Y.C. 100
 (20 6-3330)

CHANGES OF PRINCIPALS

PROCEEDINGS

- 1/1/74 Debtor's Petition, Exhibit A, Approximate Summary of Assets & Liabilities as of 10/31/74, List of Creditors, Affidavit to Rule XI-2, Corporate Resolution filed and referred to Bankruptcy Judge WILLIAM J. RUDIN.
- 1/1/74 Copies mailed to S.E.C., S.T. & D.I.R. Original and copy sent to Judge-11/15/74.
- 1/1/74 Copy of Schedules, Statement of Affairs, Report of Examiners, Contracts received from Rudin, B.J., and filed. (2)
- 1/1/75 Copy of Bankruptcy Judge's order dated Feb. 24, 1975 received and filed together with Amended and Supplemental Schedule A-3, etc.
- 6/1/76 Copy of order of Rudin B.J., dated 5/24/76 amending A-3, etc. received and filed.

Docket Entries-District Court

6/9/77 Notice of Appeal to District Court from order of Bank. J.
Rudin dated 5/17/77 filed. ASSIGNED TO: PRATT, J. (5)
(Appeal filed by Attorney General of State
of New York) (77-C-1190)

CLAIM OF APPELLEE, STATE OF NEW YORK, DEPARTMENT OF TAXATION AND FINANCE
SALES TAX BUREAU

L-33 (7/72)

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK

IN THE MATTER
OF

Seafarer Fiber Glass Yachts, Inc.

Bankrupt or Debtor

Bankrupt No. 115

Arrangement No. 74 B 1532

Hon. William J. Rudin

900 Ellison Avenue *Referee*

Westbury, NY 11590

Address

On this 14th day of April, 19 75, came William H. Mailloux
who being duly sworn, deposes and says:

That he is a Deputy Tax Commissioner of the State Tax Commission of the State of New York (hereinafter called the claimant);

That said State Tax Commission is charged with the duty of collection of taxes under Articles 28 & 29 of the Tax Law of the State of New York;

That Seafarer Fiber Glass Yachts, Inc., the person or corporation
by (or against) whom a petition for an adjudication in bankruptcy or an arrangement has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said claimant, in the sum of \$398,535.40

That the claim for said debt, with the minimum interest pursuant to sections 603.3 and 603.4 of the New York State Tax Commission's Procedural Regulations which is computed to November 14, 1974
the date of petition, is as follows:

Taxes due for the following periods	Determination	Tax	Interest	Total
12/1/69 to 8/31/74	90,180,022	\$351,722.69	\$46,812.71	\$398,535.40

That no part of said debt has been paid; that there are no set-offs or counterclaims to the same; and that no securities are held by claimant for said debt.

That priority is claimed for taxes due the State of New York which are not released by a discharge in bankruptcy.

Subscribed and sworn to before
me this 14th day of April, 19 75

THE PEOPLE OF THE STATE OF NEW YORK
THE STATE TAX COMMISSION

By

Nancy A. Van Buren
Notary Public, Albany County.

William H. Mailloux
Deputy Tax Commissioner.

NANCY A. VAN BUREN
Notary Public - 433510
Saratoga County
Commission Expires March 30, 1977

LOUIS J. LEFKOWITZ,
Attorney General of the State of New York
Attorney for Claimant
Office and Post Office Address
Capitol, Albany, N. Y. 12224

Checks should be made payable to New York State Sales Tax Bureau and forwarded to the Department of Taxation and Finance, Bureau of Law, State Campus, Albany, N. Y. 12227.

Claim of Appellee State of New York, Department of Taxation etc.

ST-570 (10/65)

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCESuffolk Branch Office
State Office Bldg.
Veterans Memorial Bldg.
Hempstead, NYSALES TAX BUREAU
XXXXXXXXXXXX
XXXXXXXXXXXXNOTICE OF DETERMINATION AND DEMAND
FOR PAYMENT OF SALES AND USE TAXES DUE

Notice Number

90,160,022

Date of Notice

December 26, 1973

Identification Number

11-1921051

054

Make payment promptly at your State District Tax
Office. Suffolk Branch FMake remittance payable to New York State Sales
Tax Bureau.Please show notice number on face of check or
money order.

Return one copy of this notice with your payment.

Seafarer Fiberglass Yachts, Inc.
765 Park Ave.
Huntington, NY 11743

and

Brian D. Acworth, Individually and as President
109 Lawrence Hill Rd., Cold Spring Harbor, NYNOTE: This determination shall be final unless an
application for a hearing is filed with the State Tax
Commission within 90 days from the date of this
notice or unless the Tax Commission shall redeter-
mine the tax.

The tax stated below is for the period as indicated below.

Explanation:

A field audit of your records disclosed additional tax due
based on additional taxable sales.As president of Seafarer Fiberglass Yachts Inc., you are
personally liable under Sections 1131 (1) and 1133 for the
following:

Amount Now Due

PERIOD ENDING

TAX

PENALTY &
INTEREST

TOTAL

February 28, 1970	\$ 4,573.50	\$ 2,635.57	\$ 7,109.07
May 31, 1970	20,227.70	11,934.34	32,162.04
August 31, 1970	10,025.95	10,654.53	20,680.48
November 30, 1970	2,931.30	1,500.09	4,431.39
February 28, 1971	1,852.40	926.20	2,778.60
May 31, 1971	17,533.90	8,264.43	25,798.33
August 31, 1971	13,274.22	5,140.66	18,414.88
November 30, 1971	15,000.40	6,150.44	21,150.84
February 28, 1972	21,714.36	8,251.32	29,965.68
May 31, 1972	16,355.83	5,721.50	22,077.33
August 31, 1972	43,153.20	13,807.02	56,960.22
November 30, 1972	7,158.20	2,075.63	9,233.83
February 28, 1973	21,163.00	5,503.63	26,666.63
May 31, 1973	21,221.00	4,831.52	26,052.52
August 31, 1973	22,310.67	4,462.10	26,772.77
November 30, 1973	24,940.65	7,462.20	32,402.85
February 28, 1974	3,057.10	733.72	3,790.82
May 31, 1974	31,040.17	5,587.23	36,627.40
August 31, 1974	45,072.77	5,408.73	50,481.50

Total

\$351,722.69

\$112,109.30

\$463,831.99

TAXING JURISDICTION

(4703) \$ 65,244.75
(4702) \$109,506.06(4712) \$175,971.00
(9999) \$112,109.30

H/TJH/ns

The amount shown above is a balance due on your account. Prompt payment will avoid additional interest.

APPELLANT'S MOTION TO EXPUNGE AND DISALLOW CLAIM OF
STATE OF NEW YORK, DEPARTMENT OF TAXATION AND FINANCE, ETC.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In the Matter

FILED

IN PROCEEDINGS FOR
AN ARRANGEMENT

of

JUN 14 1976

No. 74 B 1532

SEAFARER FIBER GLASS YACHTS, INC.
Debtor

NOTICE OF MOTION TO EXPUNGE
AND DISALLOW CLAIM OF THE
STATE OF NEW YORK, DEPART-
MENT OF TAXATION & FINANCE,
SALES TAX BUREAU

S I R S:

PLEASE TAKE NOTICE that upon the annexed petition of Seafarer Fiber Glass Yachts, Inc., dated the 8th day of June, 1976, and upon the proof of claim of the State of New York, Department of Taxation & Finance, Sales Tax Bureau, in the sum of \$398,535.40 filed in these proceedings, a motion will be made before the Hon. William J. Rudin, Bankruptcy Judge, at his courtroom, of the United States District Court, at 900 Ellison Avenue, Westbury, Long Island, on the 23rd day of June, 1976 at 10:30 o'clock in the forenoon of said day or as soon thereafter as counsel can be heard, for an order expunging and disallowing said claim, and for such other and further relief as may be deemed just and proper in the premises.

Dated: New York, New York
June 8th 1976

Yours, etc.

BATTLE, FOWLER, LIDSTONE, JAFFIN,
PIERCE & KHEEL
280 Park Avenue
New York, N.Y. 10017
(212) 949-8300
SAMUEL MASIA
2 West 45th Street
New York, N.Y. 10036
(212) 661-3654
Co-Attorneys for Debtor

Appellant's Motion to Expurge and Disallow Claim of State of New York

To: New York Sales Tax Bureau
Department of Taxation & Finance,
Bureau of Law
State Campus, Albany, N.Y. 12224

Butterbourg, Steindler, Houston & Rosen, P.C.
230 Park Avenue,
New York, N.Y. 10017
Attorneys for Creditors Committee

PETITION IN SUPPORT OF APPELLANT'S MOTION TO EXPUNGE, ETC.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

In the Matter

of

SEAFARER FIBER GLASS YACHTS, INC.,

Debtor

-----x

IN PROCEEDINGS FOR
AN ARRANGEMENT

No. 74 B 1532

TO THE HONORABLE WILLIAM J. RUDIN, BANKRUPTCY JUDGE:

The petition of SEAFARER FIBER GLASS YACHTS, INC., debtor herein, respectfully shows to this Court and alleges:

1. That petitioner is a business corporation organized and existing under the laws of the State of New York with its principal place of business at 760 Park Avenue, Huntington, New York, and since 1969 was, and still is engaged in the manufacture and sale of fiberglass sailboats.

2. That heretofore and on the 14th day of November, 1974 petitioner filed a petition for an arrangement under Chapter XI of the Bankruptcy Act and the proceeding was thereupon referred to the Honorable William J. Rudin, Bankruptcy Judge.

3. That thereafter and on the 19th day of November, 1974 an order was duly signed by said Bankruptcy Judge authorizing Seafarer Fiber Glass Yachts, Inc., as Debtor in Possession, to continue in possession of its property and to operate its business until further order of the Court.

Petition in Support of Appellant's Motion to Expunge etc.

4. That pursuant to the order as aforesaid Seafarer Fiber Glass Yachts, Inc., as Debtor in Possession, has continued to operate said business.

5. That on or about April 17, 1975 the State of New York, Department of Taxation & Finance, Sales Tax Bureau, filed in these proceedings a priority claim for sales tax and interest in the aggregate amount of \$398,535.40 and said claim was assigned number 115.

6. Seafarer Fiber Glass Yachts, Inc., the above named debtor, objects to the allowance of said claim of the State of New York upon the following grounds:

a) Upon information and belief that the tax laws of the State of New York upon which the said claim is based in so far as such tax laws relate to the taxability of sales of fiberglass sailboats manufactured and sold by the debtor in New York State to non-residents for use out of the State of New York are inequitable, unfair, unjust, discriminatory and unconstitutional.

b) The debtor is not justly and truly indebted to said claimant upon the claim filed.

c) The books and records of the debtor and other available data and information do not show or support an existing liability to the State of New York for sales tax as claimed by the State of New York but in fact contradicts said claim.

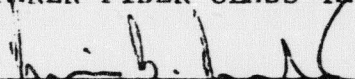
Petition in Support of Appellant's Motion to Expunge

WHEREFORE Seafarer Fiber Glass Yachts, Inc., the debtor herein, respectfully prays that the claim of the State of New York, Department of Taxation and Finance, Bureau of Sales Tax filed in the sum of \$398,535.40 be expunged and disallowed and that the debtor have such other and further relief as may be just and proper in the premises.

Dated: Huntington, New York
June 8th 1976

SEAFARER FIBER GLASS YACHTS, INC.

By



President of Debtor

Objectant

**AMENDED CLAIM OF STATE OF NEW YORK, DEPARTMENT OF TAXATION
AND FINANCE, SALES TAX BUREAU**

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK

Bankrupt No.

IN THE MATTER

OF

Seafarer Fiberglass Yachts, Inc.

FILED

Arrangement No. 74 B 1532

Hon. William J. Rudin

Referee

900 Ellison Avenue

Westbury, New York

IN THE OFFICE OF

~~XXXXXXXXXXXXXXXXXXXX~~ **WILLIAM J. RUDIN**
~~XXXXXXXXXXXXXXXXXXXX~~ **BANKRUPTCY JUDGE**

Address

On this 17th day of August, 1976, came William H. Mailloux
who ~~XXXXXXXXXXXXXXXXXXXX~~ says:

That he is a Deputy Tax Commissioner of the State Tax Commission of the State of New York (hereinafter called the claimant);

That said State Tax Commission is charged with the duty of collection of taxes under Articles 28 & 29 of the Tax Law of the State of New York;

That Seafarer Fiberglass Yachts, Inc., the person or corporation
by (or against) whom a petition for an adjudication in bankruptcy or an arrangement has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said claimant, in the sum of \$166,827.76

That the claim for said debt, with the minimum interest pursuant to sections 603.3 and 603.4 of the New York State Tax Commission's Procedural Regulations which is computed to November 14, 1974, the date of petition, is as follows:

<u>Taxes due for the following periods</u>	<u>Determination</u>	<u>Tax</u>	<u>Interest</u>	<u>Total</u>
12/1/69 to 8/31/74	90,180,022A	\$151,524.92	\$15,302.84	\$166,827.76

This claim amends and supersedes our claim filed on or about April 3, 1975 in the amount of \$398,535.40.

This amendment is based on a re-audit of the debtors books and a conference held at our New York District Office with the debtor's representatives.

That no part of said debt has been paid; that there are no set-offs or counterclaims to the same; and that no securities are held by claimant for said debt.

That priority is claimed for taxes due the State of New York which are not released by a discharge in bankruptcy.

Subscribed ~~XXXXXXXXXXXX~~ to ~~XXXXXXXXXXXX~~
~~XXXX~~ this 17th day of August 1976

THE PEOPLE OF THE STATE OF NEW YORK
THE STATE TAX COMMISSION

By

William H. Mailloux
Deputy Tax Commissioner.

~~XXXXXXXXXXXXXXXXXXXX~~

LOUIS J. LEFKOWITZ,
Attorney General of the State of New York
Attorney for Claimant
Office and Post Office Address
Capitol, Albany, N. Y. 12224

Checks should be made payable to New York State Sales Tax Bureau and forwarded to the Department of Taxation and Finance, Bureau of Law, State Campus, Albany, N. Y. 12227.

Amended Claim of State of New York Department of Taxation

STATE OF NEW YORK
 DEPARTMENT OF TAXATION AND FINANCE
 SALES TAX BUREAU
 STATE CAMPUS
 Albany, New York 12226

NOTICE OF DETERMINATION AND DEMAND
 FOR PAYMENT OF SALES AND USE TAXES DUE

Notice Number

90,150,022 A

Date of Notice

6/13/75

Identification Number

11-19-1851

Seafarer Fiberglass Yachts, Inc.
 765 Park Avenue
 Huntington, NY 11743

Make payment promptly at your State District Tax Office.

Make remittance payable to New York State Sales Tax Bureau.

Please show notice number on face of check or money order.

Return one copy of this notice with your payment.

NOTE: This determination shall be final unless an application for a hearing is filed with the State Tax Commission within 90 days from the date of this notice or unless the Tax Commission shall redetermine the tax.

The tax stated below is for the period **As Listed**

Explanation: In accordance with the provisions of sections 1137 and 1138 of the Tax Law, the following New York State and Local Sales and Use Taxes are determined to be due:

Amount Now Due

Period Ended	Tax	Interest	Total
2/23/70	\$ 1,855.32	\$ 519.70	\$ 2,375.02
5/31/70	1,873.92	495.30	2,369.22
8/31/70	3,801.12	945.00	4,746.12
11/30/70	213.25	57.99	271.24
2/28/71	990.76	216.60	1,207.36
5/31/71	1,918.01	370.53	2,288.54
8/31/71	7,195.33	1,413.70	8,609.03
11/30/71	3,287.41	570.73	3,858.14
2/29/72	4,213.05	835.32	5,048.37
5/31/72	3,659.24	656.91	4,316.15
8/31/72	5,692.60	915.20	6,607.80
11/30/72	8,635.13	1,233.47	9,868.60
2/23/73	12,016.24	1,473.72	13,490.96
5/31/73	10,239.93	1,903.31	12,143.24
8/31/73	11,210.37	951.51	12,161.88
11/30/73	11,725.20	833.12	12,558.32
2/23/74	19,430.47	1,062.11	20,492.58
5/31/74	17,826.19	577.11	18,403.30
8/31/74	17,331.23	211.51	17,542.74
TOTAL	\$151,994.92	\$15,302.94	\$166,627.76

TOTAL TAX AND INTEREST DUE

\$166,627.76

This Notice amends Notice #90,150,022 based on a re-audit of your records and a conference.

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK.
3 IN BANKRUPTCY

4 In the Matter of

5 SEAFARER FIBRE YACHT, INC.,
6

7 Debtor.
8

76B 7855

9
10 900 Ellison Avenue
11 Westbury, New York

12 January 17, 1977
13 11:05 O'clock A.M.

14 BEFORE:

15 HON. WILLIAM J. RUDIN
16 Bankruptcy Judge

17
18 ADJ SEC 376 HEARING XI

19 ADJ MOTION TO EXPUNGE &
20 DISALLOW CLAIM #115-NYS
21 DEPT. OF TAXATION & FINANCE
22 SALES TAX BUREAU

23 ADJ CONFIRMATION

24 ADJ OBJS TO CONFIRMATION
25

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Excerpts from Transcript of Hearing -

A P P E A R A N C E S:

SAMUEL MASIA, ESQ.

Co-Attorney for Debtor
2 West 45th Street
New York, New York 10036

BATTLE, FOWLER, LIDSTONE, JAFFIN, PIERCE &
KHEEL, ESQS.

Co-Attorneys for Debtor
280 Park Avenue
New York, New York 10017
BY: MICHAEL J. SALTZER, ESQ., of Counsel

LOUIS J. LEEKOWITZ, Attorney General

of the State of New York
State Tax Commission
2 World Trade Center
New York, New York 10047
BY: J. TRUBEE MILLER, ESQ., Assistant
Attorney General

BRIAN B. ACWORTH, Principal of Debtor
109 Lawrence Hill Road
Cold Spring Harbor, New York

ooo

[THE HEARING WAS CONVENED AT 11:05 A.M.]

THE COURT: Seafarer Fibre Yacht, Inc.?

MR. MASIA: This is an objection to the amended
claim of the State of New York, filed for
Sales Tax in the sum of approximately a hundred
fifty-one thousand dollars plus interest,
fifteen thousand dollars, making a total of a

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1 hundred and sixty-six thousand.

2 This matter has been on several
3 times, and in each instance, at the request of
4 the State, for one reason or another, it was
5 adjourned. Now, it's on again today. This
6 morning, we came in, we were served with an
7 Affidavit in Opposition, which, as I can see,
8 has no significance. It's not an Answer to
9 our objection. It merely is an Affidavit
10 stating that they assume that we are conceding
11 their method of computation, etc., etc.

12 We have had meetings with the
13 representatives of the Sales Tax Division, and
14 counsel, and also the Attorney General's office,
15 in connection with discussion as to the
16 possibility of settling this matter on some
17 amicable basis.

18 Apparently, we have been unsuccessful
19 in that, but in this Affidavit, they attempt to
20 use part of our discussion as concessions that
21 may have been made by the debtor. Well, no
22 concessions have been made by the debtor, and,
23 as Your Honor knows, any discussion in the
24 settlement is not relevant to a proceeding on
25 objections to claim. As far as we are concerned,

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1 we were ready to proceed with a hearing on the
2 objections, and we call on the State to produce
3 their witnesses so that we can go forward,
4 because the thing that is holding up the
5 confirmation of the Plan here is only the
6 objection to this claim.

7 THE COURT: Are you ready, sir?

8 MR. MILLER: Yes, Your Honor. Our original
9 Notice of Claim was filed in almost four
10 hundred thousand dollars for Sales Tax of boats.
11 After our proof --

12 THE COURT: [INTERPOSING] You didn't answer the
13 question; are you ready to proceed?

14 MR. MILLER: We are ready to submit an opposition
15 and follow the direction of the Court as to
16 whether the Court directs a hearing.

17 THE COURT: I direct a hearing. You must have
18 issues of fact here.

19 MR. MILLER: Our Affidavit in Opposition asserts
20 there are no issues of fact.

21 What happened here is that we filed
22 a Proof of Claim in almost four hundred thousand
23 dollars. The debtor filed a motion to expunge.
24 At the request of the debtor, re-audits were
25 made. As a result of the re-audits, we filed

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Excerpts from Transcript of Hearing

1 an Amended Bill of Claim, which is now down
2 to a hundred fifty-one thousand dollars.

3 In the Notice of Motion, in the papers
4 in support of the motion, the debtor merely
5 says -- the operative portions -- "The Tax
6 Laws of the State of New York, insofar as they
7 relate to the taxability of sales of boats
8 manufactured and sold by the debtor in New York
9 to non-residents for use out of the State are
10 inequitable, unfair, unjust, discriminatory,
11 unconstitutional," and so forth. That is a
12 conclusionary statement. As far as the Tax
13 Commission is concerned, this was made according
14 to the Laws of the State. If the debtor is
15 challenging the Laws of the State, and the
16 constitutionality of the Tax Laws, I submit
17 that the debtor has the burden of proof on that,
18 and I submit that's the issue at this point.

19 THE COURT: All right. Do you concede the amount?

20 MR. MASIA: No, we do not. The entire amount is
21 objected to by the debtor, and --

22 THE COURT: [INTERPOSING] On what grounds?

23 MR. MASIA: The objection? On the grounds that
24 these boats are not taxable. Aside from the
25 constitutional question, we deny that that amount

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1 is due. That's one of the provisions of our
2 objection, that the debtor is not justly or
3 truly indebted to the Claimant upon the claim
4 filed. I think that raises all the issues, and
5 they are making various assumptions.

6 THE COURT: Excuse me, was an amended claim filed?

7 MR. MILLER: Yes, it was, after the re-audit.

8 MR. MASIA: It was filed, Your Honor, and after
9 the amended claim was filed, we appeared in
10 Court with Mr. McLoughlin, and upon the record
11 it was agreed that the objections shall abide
12 to the amended claim with the same force and
13 effect as to the original claim.

14 THE COURT: All right, Mr. Masia. Having filed
15 a liquidated claim, the burden of proof is on
16 your side. You will have to proceed. You
17 have the laboring oar.

18 MR. MASIA: We desire to examine the people who
19 prepared this audit as to how the audit was
20 prepared, what procedure he followed.

21 THE COURT: Do you want to take an Examination
22 Before Trial; is that what you are after?

23 MR. MASIA: I'd like to examine him right now,
24 based upon his claim.

25 THE COURT: I don't understand that. Either you

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Excerpts from Transcript of Hearing

1 go to trial or you don't go to trial. Either
2 you want an Examination Before Trial -- I won't
3 permit that, I won't permit an examination
4 merely for the purpose of obtaining information,
5 unless it's an application under the Federal
6 Rules of Procedure.

7 MR. MASIA: Your Honor, they are resting -- if
8 they are resting on the Proof of Claim that
9 they filed, which merely gives amounts without
10 a breakdown and the basis for it, I don't think
11 that puts the burden upon us.

12 THE COURT: It does.

13 MR. MASIA: To proceed?

14 THE COURT: It does. Unfortunately, it does. You
15 have the laboring oar.

16 MR. MASIA: All right. Would Your Honor call that
17 again, so that I can consider whether we want
18 to proceed, or whether to ask for an Examination
19 Before Trial?

20 MR. MILLER: If I may be heard on that, Your Honor?

21 THE COURT: Heard on what?

22 MR. MILLER: On the point of production of documents
23 in the examination, I think Counselor will
24 agree we have provided to the debtor copies of
25 our audit work papers. I think you will concede

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Brian B. Acworth-for Debtor-Direct

1 that, Mr. Masia.

2 MR. MASIA: I don't know whether --

3 THE COURT: [INTERPOSING] Let him think it over.

4 I will call the matter again.

5 [WHEREUPON THE HEARING WAS ADJOURNED AT 11:12

6 A.M. AND RECONVENED AT 12:20 P.M.]

7 MR. MILLER: For the record, the Affidavit in
8 Opposition to the motion, I have admissions of
9 service I would like to make a part of the
10 record.

11 THE COURT: It is part of the record if it's
12 filed.

13 MR. MILLER: It hasn't been filed.

14 THE COURT: Give it to me, it will be considered
15 filed.

16 Please rise, Mr. Acworth.

17
18 B R I A N B. A C W O R T H, having been duly sworn
19 by the Bankruptcy Judge, was examined and testified as follows:

20 THE COURT: Give your name and address to the
21 Reporter.

22 THE WITNESS: Brian Acworth; 109 Lawrence Hill Road,
23 Cold Spring Harbor, New York.

24 MR. MASIA: The only thing that I have to say
25 with respect to that Affidavit is that it's not

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1 a proper Answer to the objection, which is a
2 form of Petition.

3 THE COURT: We will consider this a general denial
4 of your objections.

5
6 EXAMINATION BY MR. MASIA:

7 Q Mr. Acworth, are you an officer of Seafarer
8 Fiberglas Yachts, Inc., the debtor in this proceeding?

9 A Yes.

10 Q What office do you hold?

11 A President.

12 Q And are you also in general charge of the
13 operations of the business?

14 A Yes.

15 Q Of Seafarer?

16 A Yes.

17 Q And have you been in that position since the
18 inception of the corporation?

19 A Yes.

20 MR. MASIA: Now, may I call on Mr. Miller to
21 produce the audit upon which the claim filed
22 by it, or the amended claim filed by the State
23 of New York in the sum principal amount, one
24 hundred fifty-one thousand five twenty-four
25 ninety-two was made.

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Brian B. Acworth-for Debtor-Direct

1 MR. MILLER: We have been served with no Notice
2 to Produce in this matter, nor have we been
3 served with any motion or other proceeding with
4 respect to discovery. I will say, however, I
5 have provided opposing counsel with the audit
6 papers he requested.

7 MR. MASIA: Mr. Miller, I show you these; it
8 purports to be a copy of a report dated
9 August 9, 1976, and I ask you whether this is
10 the report of the Sales Tax examiner upon which
11 the claim filed herein is based?

12 MR. MILLER: I must respectfully point out, I'm not
13 under oath in this matter, and have no personal
14 knowledge of this matter at all. I will say
15 that these are papers which I delivered to you
16 at your request, and I obtained them from the
17 Tax Commission. That's all I can say.

18 THE COURT: Supposed to represent what?

19 MR. MILLER: It was represented to me that these
20 papers represented the wor' papers on the final
21 audit and the final review.

22 THE COURT: I will accept them for that purpose,
23 and indicating the reason given by Counsel.

24 MR. MASIA: All right. This report states that
25 a conference was held on July 14, 1976, with

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Brian B. Acworth-for Debtor-Direct

1 Mr. Blum of Legal Enforcement and attorneys
2 for the above bankrupt, and it was decided that
3 the audit should review taxpayer's records,
4 and makes adjustments for transportation and
5 trailer sales;

6 "Based on that review, it is
7 recommended that assessment number 90190022,
8 dated December 26, 1974, for four hundred
9 sixty-three thousand eight thirty-one ninety-nine
10 be revised to one hundred fifty-one thousand
11 five twenty-four ninety-two, plus penalty and
12 interest as per attached Schedule of Deficiency,"
13 and signed by Harry Blyberg, Associate Sales
14 Tax Examiner.

15 I ask that this letter and the
16 report attached be marked as Debtor's Exhibit I
17 for identification.

18 THE COURT: All right.

19 [WHEREUPON LETTER AND REPORT WERE MARKED
20 DEBTOR'S EXHIBIT I FOR IDENTIFICATION.]

21 BY MR. MASIA: [CONTINUING]

22 Q Now, Mr. Acworth, will you state what the nature
23 of the business of Seafarer is?

24 A We design, manufacture and sell Fiberglas sailboats
25 from twenty-two feet long to thirty-eight feet long. These

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Brian B. Acworth-for Debtor-Direct

1 boats are sold to customers throughout the United States and
2 abroad.

3 Q And would you state when this company was
4 organized?

5 A It was incorporated in the State of New York in
6 1959.

7 Q Has it continued to do business since that time
8 within the State of New York?

9 A That's correct, yes.

10 Q What is the address of the corporation?

11 A 760 Park Avenue, Huntington, New York, 11743.

12 Q How long has it been doing business at that
13 address?

14 A Since August, 1970.

15 Q Prior to that time, where was it engaged in
16 business?

17 A It was at 414 New York Avenue, Huntington, New
18 York.

19 Q Now, since the filing of the Petition for
20 Arrangement on November 14, 1974, had you received, from the
21 State of New York, or from your counsel, a copy of this report
22 which is marked Debtor's Exhibit I for identification?

23 A You said prior to November 14th?

24 Q Since that time.

25 A Since that time, yes.

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Brian B. Acworth-for Debtor-Direct

1 Q Will you examine that report?

2 [WHEREUPON WITNESS COMPLIES WITH REQUEST]

3 Q Now, would you look at the page of that report
4 entitled "Taxpayer's Computation as Audited by New York Sales
5 Tax Department"?

6 A Right.

7 Q Do you know how the State arrived at this figure
8 for total tax due, per audit, of eighty-six thousand nine
9 eighty-three twenty-nine?

10 A Subsequent to our filing under Chapter XI in the
11 Bankruptcy Law, the State of New York filed a claim for Sales
12 Tax they alleged due. They looked at our records, and they
13 made a claim for every sale that we made that we hadn't paid
14 tax on previously.

15 The sole criteria there was whether tax had been
16 paid or not. Of course, we filed every -- periodically, I
17 think it is -- every year a Sales Tax Return in which we break
18 down our sales into taxable sales and non-taxable sales, and
19 they simply took the total of the non-taxable sales and claimed
20 that tax was due on those sales.

21 Subsequently, we met with an official of the State
22 Tax Commission in New York City, and he asked me whether the
23 total that was claimed, which at that time was approximately
24 four hundred thousand dollars, was accurate, and I said that
25 we didn't agree to any part of it. He said on what grounds

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1 didn't we agree, and I gave him various grounds, among them
2 boats that had been trucked out of State on public carrier
3 truckers, and boats sold to dealers, about which there was no
4 dispute by the Sales Tax Commission.

5 An auditor was sent out to our premises to go
6 through our records and determine what were the actual sales
7 in which the Sales Tax Department would make a claim. So, the
8 result of that audit was the tax was reduced to approximately
9 a hundred sixty-six thousand dollars; approximately.

10 Q You are referring to the hundred fifty-one
11 thousand?

12 A No, the hundred sixty-six thousand, which was the
13 second audit. There were three audits altogether. The second
14 audit we came to a hundred and sixty-six thousand, and that's
15 where this figure of eighty-six thousand nine hundred
16 eighty-three dollars came from. The auditor did not go
17 through all the sales, he went through a portion of the sales,
18 approximately half of them, and he came to a tax due on that
19 portion of the sales, and he applied that proportion to all
20 our sales, and he computed from the eighty-six thousand dollars
21 due on the sample that we owed, approximately a hundred and
22 sixty-six thousand on the total.

23 Q Hold it at that point.

24 A That is the total at that time he did not accept
25 as non-taxable.

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Brian B. Acworth-for Debtor-Direct

1 Q I note, as part of that report, they had a
2 recalculation by Seafarer; do you have the underlying figure
3 upon which that recalculation by Seafarer was made?

4 A Yes, I do. The first audit, then, or the second
5 audit, the Sales Tax Commission reduced the number of sales
6 which they, at that time, considered taxable, by two hundred
7 and fifty thousand. We then met again with the Sales Tax
8 people, and we again considered the question of taxes applicable
9 and there was advanced at that time a basis for that; that if
10 these sales that were now considered taxable were, in fact,
11 taxable, which we didn't agree to then, and we don't agree to
12 now, however, if they were taxable, then New York State has a
13 convention with other States and where there is reciprocity in
14 the matter of taxes, and some of these other States have a
15 reciprocity for the State portion of the tax only, and some
16 have a reciprocity for both the State and the local portion
17 of the tax.

18 At that time, the people from the State gave me a
19 list of States which had reciprocity arrangement with the State
20 of New York, as to whether they were entirely reciprocated or
21 only partly reciprocated. What we did, we went through all
22 these sales that were included in their sample to determine
23 which ones have this reciprocal arrangement, and to what extent
24 the reciprocity extended, and we then produced an analysis,
25 which I have here, which reduced the tax on the sample from

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Brian B. Acworth-for Debtor-Direct

1 eighty-six thousand nine hundred eighty-three to fourteen
2 thousand five hundred and three, which would mean a total tax
3 reduced from a hundred and sixty-six thousand five hundred and
4 ten to twenty-seven thousand seven hundred fifty-seven.

5 We went back after that to the State of New York
6 and rediscussed it again, and, at that time, the consent of
7 reciprocity was --

8 Q [INTERPOSING] Never mind. That was the figure
9 that appears on this page which is marked "Seafarer's
10 Recalculation," which the State included as part of their
11 report to us, which is now shown as Debtor's Exhibit I for
12 identification, is that right?

13 A Right.

14 Q Now, what I ask you is whether you have a breakdown?

15 A Yes, I do.

16 Q Of the items as set forth in this page of the
17 report, which is marked "Recalculation by Seafarer"?

18 A Right, I do.

19 Q May I see that?

20 A There is a separate sheet here for each type of
21 boat. When the Sales Tax auditor originally made his audit,
22 he took all the boats we sold in the period and he broke them
23 down into various categories, and then we got an adding machine
24 tape from the State which enabled us to distinguish what
25 category he put boats in. We, therefore, were able to prepare

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Brian B. Acworth-for Debtor-Direct

1 a list of boats on which , at that time, said the tax was
2 due, and we then made a list of each of those boats. We then
3 determined the State where the boat was registered and applied
4 the percentage to the tax -- that is, the amount of the boat
5 we applied the percentage of the tax to, and came up with a
6 total for each type of boat. That is listed here on this
7 anal. s. I have here, also --

8 Q [INTERPOSING] Excuse me just a second.

9 THE COURT: Does the Statute of Limitations figure
10 on this?

11 MR. MASIA: I think so, yes. The Statute of
12 Limitations, as far as I can see, should apply
13 to the period before November 14, 1971. Anything
14 prior to that time should be excluded as a
15 priority claim, if it be allowed ultimately.

16 Q Now, Mr. Acworth, will you look at that Exhibit I
17 for identification again, and can you state whether any taxes
18 were collected by Seafarer from any of the purchasers listed
19 in that Exhibit, upon which the State of New York based its
20 calculation?

21 A No, we --

22 Q [INTERPOSING] Now, will you state the basis for
23 the failure of Seafarer to collect any tax on the purchases
24 made by those persons listed in that Exhibit for identification?

25 A Section 1213 of the State of New York Sales and Use

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Brian B. Acworth-for Debtor-Direct

1 Tax Laws says that, "where a sale of taxable personal property
2 or services is made" -- I'm eliminating words that don't
3 apply here -- "is made in any City, County or School District,
4 but the property sold, or the property of one which services,
5 performs or will be delivered to the purchaser elsewhere, such
6 sale should not be subject to tax by such City, County or
7 School District."

8 Then, I'm skipping a section here, and it says,
9 "for the purposes of this Section, delivery shall be determined
10 to include transfer of possession to the purchaser and the
11 receiving of property by the purchaser."

12 So, when delivery is made outside the State, Sales
13 Tax is not applicable, at least does not have to be collected.
14 Now, it happens that the merchandise which we manufacture is
15 not of the type that can be shipped in the normal way. We
16 can't mail a boat, and in most cases, we can't put a boat on
17 a truck; that is, an ordinary common carrier truck. So, it
18 comes to a question of how to apply with this Law.

19 Now, not so much how do we apply, but how do we
20 obtain the evidence that we have complied with the Law? Since
21 normal evidence is not available to us, I contacted the Sales
22 Tax Department and asked their advice, and I was told that in
23 cases where no other evidence of a normal type is available,
24 an affidavit from the purchaser would be considered as proof,
25 and, therefore, we obtained from each purchaser an affidavit

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Brian B. Acworth-for Debtor-Direct

1 and --

2 Q [INTERROGATING] Excuse me, were these affidavits
3 obtained by Seafarer in the regular course of its business?

4 A Yes. We had a procedure, wherever we sold a boat
5 where the purchaser was an out-of-State resident and would use
6 the boat out of State and take delivery out of State, in order
7 to comply with the requirement that we had evidence of out-of-
8 State delivery, we obtained this affidavit. It was a printed
9 form which we used without amendment in each case. Attached
10 to the affidavit in every case was a proof from the purchaser
11 that he was, in fact, a resident of another State. The proof
12 almost always was a driving license. Occasionally, a driving
13 license wasn't available, and we obtained a tax receipt or
14 some other proof that, in fact, he lived out of State.

15 Q Excuse me, will you produce these affidavits of
16 proof that you are referring to now?

17 THE WITNESS:

18 Your Honor, I have four boxes
19 containing records. It's the record we keep
20 when we do business. These files here, for
21 example, John is the name of the customer, the
22 24 means the type of boat and the 99 is the
23 hull number. These are our regular, normal files
24 for all our transactions. What I have here is
25 a file for each boat that was contained in the
audit that the State made, the hundred sixty-six

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Brian B. Acworth-for Debtor-By the Court

1 thousand dollar audit, and I will pick out any
2 file or any number of files that anyone wishes
3 me to pick out.

4 Q Will you pick out --

5 A [INTERPOSING] Any one, just at random? I don't
6 know, somebody give me a file and I will pick it.

7 Q Pick out any one.

8 THE COURT: Before you do that, I'd like to ask
9 you several questions.

10
11 EXAMINATION BY THE COURT:

12 Q What were the forms of delivery outside the State?

13 A We deliver out of State either on a trailer or,
14 actually, on all the forms of delivery there is a sale to a
15 customer and a sale to a dealer. When there is a sale to a
16 dealer, then the form of delivery is not significant because
17 sales to a dealer are automatically excluded from being taxable.

18 Q Were those items part of the tax claim of the State
19 of New York, the dealer sales?

20 A Originally they were.

21 Q I mean now; they filed a claim in a sum of one
22 hundred fifty-one thousand, approximately.

23 A That is the result of the third audit, and the
24 third audit we have eliminated dealer sales.

25 Q Let's forget that now. We are dealing with sales

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Brian B. Acworth-for Debtor-By the Court

1 to individuals, is that right, or corporations?

2 A Correct.

3 Q And what forms of delivery did those take?

4 A You either put the boat on a trailer or a truck
5 and it's taken away by motor vehicle, or the boat is put in the
6 water and delivered in the water.

7 Q Let me ask you this; when deliveries are made by
8 truck, is it your truck or is it somebody else's truck, a
9 company's truck?

10 A There are three kinds of trucks. There is our
11 truck, there is a regulated common carrier truck, and there is
12 a non-common carrier truck. In the first case, the delivery
13 is by our truck. New York State has accepted those as being
14 our records there as proof of out-of-State delivery. The
15 second kind of truck, the common carrier truck, they have also
16 accepted as proof of out-of-State delivery. There are very
17 few common carrier deliveries because the common carrier trucks
18 only function over long distances. If you are shipping to
19 California or Florida, that kind of distance, then it's feasible
20 and economical for the common carrier to do the job. But if
21 you are shipping shorter distances, it's not feasible, and so
22 what happened there was that the customer would contract with
23 a local carrier, usually a boat yard, who will send their
24 truck and trailer to pick up the boat, and we would put this
25 boat on that trailer, and it would be taken away by the trucker.

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Brian B. Acworth-for Debtor-By the Court

1 Q Is that the source of dispute now, the third
2 source?

3 A The two sources of dispute; one, the putting on
4 the trailer of the non-common carrier, and the second is the
5 question of in-water delivery, where we took the boat into
6 Long Island Sound, passed the halfway point, and the State,
7 however, is maintaining that those boats are taxable sales.

8 Q What happened to the boats after you took them
9 beyond this -- whatever limits you placed on the water?

10 A We brought the boat back to Huntington, we put
11 ashore the person who did the delivery, and the boat was then
12 taken away by the customer, in most cases.

13 Q I don't understand that. You say you brought the
14 boat back?

15 A Yes. Well, this is more economical than leaving
16 the man on the other side of Long Island Sound, for example;
17 he has to be returned.

18 Q He has to be returned, and where was the boat to
19 go?

20 A Well, the boat --

21 Q [INTERPOSING] You say you took it back to your
22 yard in Huntington.

23 A Then the customer takes it away to Connecticut, or
24 New Jersey, or Maryland, or wherever he's going.

25 Q Why did he take it away from the middle of the Sound?

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Brian B. Acworth-By the Court

1 A Because our man is aboard, and has to be returned.

2 In other words --

3 Q [INTERPOSING] I appreciate what you're saying.
4 Of course, he could have been delivered -- he could have been
5 disembarked someplace in Connecticut or some other State
6 adjacent to the water.

7 A Could have been, but then you'd have to have
8 somebody pick up -- or he'd have to use public transportation,
9 and this is an expense which would serve no function.

10 Q Of course, you'd have a certain amount of expense,
11 too; gasoline, and the time, too.

12 A That's correct. However, these voyages also serve
13 as a trial period for the boat.

14 Q Shakedown cruise?

15 A Exactly. It enables us to discover if anything
16 needs attention. You accomplish two things at once, and the
17 fact that the boat was scheduled to come back to Huntington
18 made it possible to make any adjustments that were necessary
19 before the final departure of the customer.

20 Q It becomes a question of fact, as to whether the
21 boat was delivered somewhere in the middle of the Sound or
22 some other body of water, and the customer took delivery of it
23 at that point?

24 A Correct.

25 Q How many vessels were involved in this sort of

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Brian B. Acworth-for Debtor-By the Court

1 arrangement?

2 A Well, we sell probably three-quarters of our boats,
3 approximately, to people who are not residents of New York
4 State, and of those, perhaps half get delivered in this, let's
5 say, this unusual way.

6 In other words, a way that is not contemplated in
7 the normal course of the Sales Tax Department's audits, because
8 this is a special kind of merchandise, and so -- I don't have
9 the exact number here, but I would guess that there are two
10 hundred boats involved, something like that.

11 Q Over how long a period of time?

12 A I think we are talking about a period of several
13 years. I think it's maybe -- what is it, four, five years,
14 something like that.

15 MR. SALTZER: I think you can tell from the audit
16 marked as Exhibit I. Those designated sailaway
17 are the boats delivered now in the manner he's
18 described.

19 THE WITNESS: The period involved is December 1,
20 1969 through August 31, 1974, so this is a
21 period of almost five years. During this
22 period the Sales Tax Department visited us
23 several times, looked at our books, never filed
24 a claim.

25 THE COURT: At this point, we will take a recess.

Modern Shorthand

Brian B. Acworth-for Debtor-Direct (Cont.)

1 Do you want to come back this afternoon, or do
2 you want to continue another day?

3 MR. MASIA: We might as well return.

4 THE COURT: 2:30, then. I suggest, if you are
5 going to assert any defense for the Statute of
6 Limitations -- I don't see it in your papers
7 there -- you will have to make an affirmative
8 defense, and they have to file an amended
9 objection.

10 MR. MILLER: Of course, it wasn't asserted in the
11 papers, and if an amendment is made, I will
12 oppose it on the grounds of surprise, since it
13 wasn't raised before.

14 THE COURT: I'm not going to foreclose you by any
15 means, of defending that sort of a defense. In
16 what form would the surprise take; that you
17 wanted an adjournment, or what? You can have
18 an adjournment any time.

19 MR. MILLER: Of course, it was never raised before,
20 and we are not prepared to meet it.

21 THE COURT: He's not foreclosed.

22 MR. MASIA: We discussed that before, with his
23 Department, and the question of the Statute of
24 Limitations, Your Honor, is -- I don't think we
25 are required to put in an affirmative defense on

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Brian B. Acworth-for Debtor-Direct (Cont.)

1 that, because under the law, under the Statute,
2 the Bankruptcy Act, they fixed a three year
3 period, and if they come before the Court and
4 file a priority claim beyond the three year
5 period, I think the Court is required, as a
6 matter of law, to reject the priority portion
7 of that claim, because it's not permitted by
8 Statute.

9 THE COURT: I won't argue that point. We'll
10 adjourn until 2:30.

11 [WHEREUPON THE HEARING WAS RECESSED AT 12:50
12 P.M. AND RECONVENED AT 2:50 P.M.]

13 EXAMINATION BY MR. SALTZER:

14 Q Mr. Acworth, before lunch, you testified as to
15 your procedure with regard to the sales of boats to out-of-State
16 residents. We were talking about those that are delivered in
17 the water. I believe, on your documents, you referred to them
18 as sailaways, is that correct?

19 A Yes.

20 Q You testified that you obtained, in each case, an
21 affidavit from the out-of-State resident for whom the boat was
22 being delivered, is that correct?

23 A Yes.

24 Q Could you, from any one of the files in front of
25 you, produce one of the affidavits that you referred to?

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Brian B. Acworth-for Debtor-Direct (Cont.)

[WHEREUPON WITNESS COMPLIES WITH REQUEST]

Q You have handed me a document entitled, "Certificate of Out of State Residence."

A Wait a minute, take that one back. The reason is, that you asked me for a sailaway, and this is a truck delivery. This one is a sailaway. [INDICATING]

Q You have handed me a document entitled, "Certificate of Out of State Residence," and it bears the name of one Dominic Belluso. Would you describe this document to the Court, and tell the Court how that document was obtained, and whatever else is pertinent?

A When the buyer was an out-of-State resident who was going to use his boat out of State, we asked him to sign a certification to that effect. We asked for a print of his driver's license, or other proof of out-of-State residency, and we had a form certification here which he signed, and which each person signed.

Q Did Mr. Belluso purchase a boat from Seafarer?

A Yes.

Q What kind of a boat did he purchase?

A This is a Seafarer 24, which means twenty-four feet long, hull number 110.

Q Is that one of the boats with respect to which the State Tax Commission claims a tax is due, a Sales Tax is due?

A Yes.

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Brian B. Acworth-for Debtor-By the Court

1 Q And the certificate that was signed by Mr. Belluso,
2 when was that signed?

3 A This was signed prior to the delivery of the boat.

4 Q And is there a date on the document that you are
5 referring to?

6 A Yes, November 1, 1972.

7 THE COURT: What was the claimed residence of that?

8 THE WITNESS: 45 Henderson Lane, Willingboro, New
9 Jersey.

10 THE COURT: Where was the boat delivered?

11 THE WITNESS: The boat was delivered in the water,
12 in the Sound.

13 Q Now, Mr. Acworth, for all of the boats that were
14 delivered to out-of-States residents in the water, as you have
15 described, was a similar document, that is, similar to the one
16 signed by Mr. Belluso, obtained by Seafarer?

17 A Yes.

18 Q And do you have such a document in each of the
19 files that pertain to boats delivered in the water to out-of-
20 State residents, that you have here today?

21 A Yes.

22 Q I believe you testified these files that you have
23 here today are files on the boats with respect to which the
24 New York State Tax Commission claims Sales Tax is due, is that
25 correct?

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Brian B. Acworth-for Debtor-Voir Dire-Claimant

1 A Yes, these are the files that were included in
2 their sample. I don't have any of the files for the boats
3 that were not included in their sample, but they sampled
4 approximately half of our total files, and these are the ones
5 out of that sample they examined, which they have said
6 represent taxable sales.

7 MR. SALTSLER: Your Honor, at this time, I would
8 offer the certificate signed by Mr. Belluso
9 as Debtor's Exhibit II in evidence.

10 THE COURT: Off the record.

11 [DISCUSSION OFF THE RECORD]

12 [WHEREUPON REPORT MARKED DEBTOR'S EXHIBIT I
13 FOR IDENTIFICATION WAS MARKED DEBTOR'S EXHIBIT I
14 IN EVIDENCE, AND CERTIFICATE OF OUT OF STATE
15 RESIDENCE WAS MARKED DEBTOR'S EXHIBIT II FOR
16 IDENTIFICATION.]

17 MR. MILLER: I would like to have a voir dire on
18 document number II.

19 THE COURT: Go ahead.

20 VOIR DIRE EXAMINATION BY MR. MILLER:

21 Q Mr. Acworth, with respect to this document entitled,
22 "Certificate of Out of State Residence," apparently signed by
23 one Dominic Belluso, hull number 110, did this sale actually
24 take place?

25 A Yes.

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Brian B. Acworth-for Debtor-Voir Dire (Claimant)

1 Q Was there any other instruments or documents in
2 connection with this particular sale?

3 A Yes, there was a contract.

4 Q Do you have that with you?

5 MR. SALTZER: I would only go into the validity of
6 this document now. If he wants to cross-examine
7 on whatever else he's brought, he's entitled to.
8 I don't think this has to do with the voir dire
9 of this document.

10 THE COURT: He's right, that's cross-examination.

11 MR. MILLER: I will allow it in subject to my
12 cross-examination as to its completeness and
13 to its legal relevance.

14 [WHEREUPON CERTIFICATE OF OUT OF STATE RESIDENCE
15 WAS MARKED DEBTOR'S EXHIBIT II IN EVIDENCE.]

16 MR. SALTZER: Your Honor, at this time, I have in
17 mind a question of what to do about the other
18 Certificates of Out of State Residence. Mr.
19 Acworth has one for each of the files he's brought
20 here today.

21 THE COURT: How many are those? Approximately
22 how many files were involved in this sailaway
23 transaction?

24 THE WITNESS: I don't know exactly, but I would
25 guess at about -- perhaps half to two-thirds of

Modern Shorthand

Brian B. Acworth-for Debtor-Voir Dire (Claimant)

1 the number of the sample of sailaways, and the
2 remainder of these, truck deliveries.

3 THE COURT: In number, approximately, how many?

4 THE WITNESS: Let's say there are about a hundred,
5 roughly, of these sailaways, perhaps less.
6 Between seventy-five and a hundred are sailaways,
7 and the remainder are pick-up, and there's
8 probably forty pick-ups.

9 THE COURT: I think you indicated that the
10 pick-ups were not involved in the Sales Tax
11 claim.

12 MR. SALTZER: One of the three types of pick-ups is
13 still involved in the Sales Tax claim.

14 THE COURT: That was the sailaway?

15 MR. SALTZER: No, no, one of the three land type
16 deliveries for pick-ups. There are three types
17 of land deliveries. He's characterized it as
18 three; one was the use of his truck, one was
19 the common carrier, and -- certified common
20 carrier -- and the third one was somebody using
21 a vehicle not a common carrier, not licensed
22 as a common carrier, a private vehicle, a
23 chartered vehicle, or something else. It is
24 that last category still in issue with respect
25 to the Sales Tax.

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Brian B. Acworth-for Debtor-By the Court (Cont.)

1 THE COURT: Which is the truck hired by Mr.

2 Acworth?

3 MR. SALTSER: No, it would be the truck that was
4 arranged for by the purchaser, in most cases.

5 THE COURT: That's involved in this, together
6 with the sailaway, is that correct, Mr. Acworth?

7 THE WITNESS: Yes, Your Honor.

8 MR. SALTSER: At the moment, we have just been
9 talking about the sailaways.
10

11 FURTHER EXAMINATION BY THE COURT:

12 Q So, involved in this type of proceeding, you say
13 that's between seventy-five and a hundred?

14 A I haven't added it up, I'm guessing; yes.

15 Q Seventy-five or a hundred involved in the objections,
16 is that right?

17 A No, in the objections, I'm guessing there is a
18 hundred to a hundred and twenty-five, because there is two
19 categories of objections; there is the truck objection, and
20 the sailaway objection.

21 Q And, without restricting it to those included in
22 the samples taken by the Sales Tax office, I'm talking about
23 all of those which they included in their Complaint.

24 A They sampled a little less than half of the total
25 by dollars, and presumably, I'm guessing, about half in number.

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Brian B. Acworth-for Debtor-Direct (Cont.)

1 So, then, you'd have to approximately double the numbers I just
2 gave you, so perhaps there is a total of two hundred and
3 fifty transactions altogether.

4 Q That's what I'm referring to.

5 A Of which two hundred might be sailaways and fifty
6 might be the vehicle delivery, approximately.

7 Q That number is involved in the Sales Tax claim?

8 A Yes, sir.

9 THE COURT: All right, continue.

10
11 FURTHER EXAMINATION BY MR. SALTZER:

12 Q It appears there are approximately ninety-three
13 whole numbers set forth on the sample, and the sample was
14 something less than one half.

15 A A little bit less than a half, by dollars.

16 Q We are probably talking about two hundred boats
17 altogether?

18 A Sorry, other way around. The sample is a little
19 more than a half, perhaps a hundred and eighty, then, or
20 something like that, altogether.

21 Q I count approximately ninety-three in the sample.

22 A It's a little less than double -- would be a hundred
23 eighty.

24 Q So there should be approximately ninety to a
25 hundred files here today, and perhaps applicable, then, to a

Modern Shorthand

1 hundred and eighty sales altogether, is that what we are
2 talking about?

3 A There should be ninety-three files here today.

4 MR. SALTZER: My count may be off. The question
5 that I raise with the Court now is we have one
6 of these affidavits for each one of these files;
7 we are prepared to offer one as a representative
8 of all of them, if the State would concede, in
9 fact, there is such a document with respect to
10 each one of the files.

11 THE COURT: Mr. Miller, would you concede, then?

12 MR. MILLER: If you give me a minute, Your Honor.

13 So conceded, Your Honor.

14 BY MR. SALTZER: [CONTINUING]

15 Q Mr. Acworth, just so we are clear, this is a form
16 that was prepared by Seafarer Fiberglass Yachts?

17 A Yes.

18 Q And this form was the same in each case?

19 A Yes.

20 Q And the form was used in connection with boats that
21 were delivered in the water to out-of-State residents, is that
22 correct?

23 A It was used in connection with all the deliveries
24 to out-of-State residents, no matter what form the delivery
25 took.

Modern Shorthand

Brian B. Acworth-for Debtor-Voir

1 Q Whether it be in the water, sailaway, or by truck?

2 A And by any kind of truck.

3 Q There is, attached to Debtor's Exhibit II, a copy
4 of a driver's license.

5 A In most cases. There are a few cases where they
6 didn't have a driver's license or couldn't produce a driver's
7 license, or whatever, and in that case, we have an equivalent
8 proof, usually a tax receipt showing a real estate tax paid on
9 a residence.

10 Q In all cases, were these documents obtained prior
11 to your delivery of the boat?

12 A Yes.

13 Q And, in fact, as a condition for the delivery of
14 the boat?

15 A Exactly.

16 Q Now, you testified this morning that during one of
17 the conferences held with representatives of the State Tax
18 Commission, the question of reciprocity was raised; do you
19 recall that testimony?

20 A Yes.

21 Q And, after that conference, did you do anything
22 with respect to the question of reciprocity? Did Seafarer or
23 yourself take any action?

24 A We did. We wrote -- first of all, we analyzed all
25 the boats in the sample according to which State they were sent

Modern Chatham

1 Q Is that the signature of the buyer at the bottom,
2 so far as you know?

3 A Well, let's compare it; yes, as far as I know.

4 Q As far as you know, it's the signature of the
5 buyer?

6 A Yes.

7 Q Now, I refer you to Debtor Exhibit II, which is
8 dated November 1, 1972, which is entitled, "Certification of
9 Out of State Residence." Is it a fact, Mr. Acworth, that you
10 requested the signature on these instruments from all out-of-
11 State residents?

12 A All out-of-State residents who were going to take
13 delivery out of State.

14 Q I refer you to this document which you handed me
15 to look at, entitled, "Customer Purchase Agreement," which is
16 dated almost three weeks later, the 18th of November, 1972,
17 and I refer you to item two, which reads as follows -- printed
18 portion -- "The yacht shall be delivered by seller to buyer at"
19 -- handwritten portion -- "Huntington F.O.B." -- printed
20 portion -- "or such place as the parties may subsequently
21 agree in writing."

22 I offer this in evidence.

23 [WHEREUPON MR. MILLER HANDS DOCUMENT TO MR.
24 SALTSER.]

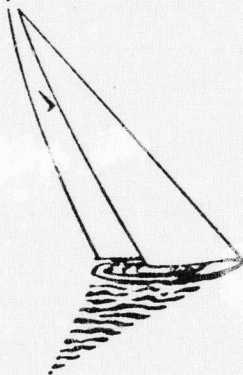
25 MR. SALTSER:

No objection.

Modern Shorthand

59 a

EXHIBIT TWO, MARKED IN EVIDENCE ON HEARING



K		

CERTIFICATION OF OUT-OF-STATE RESIDENCE

This will certify that I, DOMINICK BELLUSO
of 45 HENDERSON LA.
WILLINGBORO, N.J. 08046

am not a resident of New York State and am purchasing

Boat # 110 sailboat for use outside
of New York State and will take delivery out of New York State.

Signed

Date

11/1/72

Note: Proof of out-of-state residence (copy of driving license, for example) must be attached.

F19

Debtors G. ^{Two} ~~int~~ introd
1-17-77 MDM

60a

Exhibit Two, Marked in Evidence on Hearing

12207 11700 06372									
JAN 31 73					FEB 22 72				
DOMINICK					DELLUSO				
45 HENDERSON LA									
WILLINGBRO									
M. 1									
MO. YEAR									
06 37 2 7 1 5 09 00 4.00									
BIRTH DATE									
EYES SEX HT WT									
HEIGHT									
SIGN HERE									
AMERICAN BANK NOTE CO									
15 147A, 21/71									
DIRECTOR									

FINDINGS, CONCLUSIONS AND ORDER OF HON. W.J. RUDIN
GRANTING MOTION TO EXPUNGE AND DISALLOW CLAIM

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -x

In the Matter :
of :
SEAFARER FIBER GLASS YACHTS, INC. : 74-B-1532
Debtor. :

- - - - -x

The State of New York, Department of Taxation and Finance, Sales Tax Bureau, filed a claim herein in the sum of \$398,535.00 for unpaid sales taxes and claimed priority in payment. The debtor filed objections to the claim on the ground that the claim was inequitable, unfair, unjust, discriminatory and unconstitutional; that the debtor was not indebted in the sum upon which the claim is filed; and that the books and records of the debtor do not only reflect but is in contradiction of the claim.

The State filed an affidavit in response to the motion which stated that after the aforementioned claim was filed, it conducted a "more detailed test of the debtor's records" and as a result thereof, reduced its claim to the principal sum of \$151,524.92 and filed an amended claim in that sum. The parties stipulated that the objections would apply to the amended claim as filed herein with the same force and effect as to the original claim. (s.m. p. 6)

At the hearing held herein, it was agreed that the objections related to two types of boat deliveries to out-

Findings, Conclusions and Order Granting Motion to Expunge
of-state customers. One was the so-called "Sailaway", which was a delivery of the boat to the purchaser in the Long Island Sound, beyond the jurisdiction of the State of New York, and the second type of delivery was by a private or chartered vehicle but not a licensed common carrier by an out-of-state customer.

The debtor is engaged in the business of designing, manufacturing and selling fiberglass sailing yachts. Its manufacturing plant and showroom are located at Huntington, New York. It sells its vessels directly to the public from its showroom in Huntington and also through dealers in other states.

On April 17, 1975, the State Tax Commission filed a claim herein for unpaid sales taxes in the principal sum of \$351,722.69 which, together with interest, came to \$398,535.40. The period covered by this claim was December 1, 1969, through August 31, 1974. An objection was made to this claim by the debtor and pending a hearing thereon, a re-audit was made by the taxing agency. The re-audit resulted in a reduced claim in the principal sum of \$151,524.92, interest thereon of \$15,302.84, making a total claim in the sum of \$166,827.76. This claim also covered the period from or the period ending February 28, 1970, through August 31, 1974.

It was stipulated that the debtor's objections to the claim in the sum of \$398,535.40 should apply to the amended claim in the sum of \$166,827.76 with the same force and

Finding, Conclusions and Order Granting Motion to Expunge etc.

effect as if made against the amended claim.

Section 1105 of the Tax Law of the State of New York provides:-

"1105. Imposition of sales tax.

On and after June first, nineteen hundred seventy-one, there is hereby imposed and there shall be paid a tax of four per cent upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article. (None of the subsequent subdivisions apply.)"

This Court by independent research has failed to find a provision of the Tax Law which directly imposes a sales or use tax on sail or motor boats. It is therefore necessary to apply other sections of the Tax Law or any other Law to the problem for a solution.

Neither the memorandum of the Attorney General nor that of the debtor points to a provision of the Tax Law directly relating to boats. There are provisions dealing with sales of motor vehicles and their exemptions from taxes on various types of sale. For example, Section 1117 of the Tax Law states:-

"(a) Receipts from any sale of a motor vehicle shall not be subject to the retail sales tax imposed under subdivision (a) of section eleven hundred five, despite the taking of physical possession by the purchaser within this state, provided that the purchaser at the time of taking delivery:

- (1) is a nonresident of this state,
- (2) has no permanent place of abode

Findings, Conclusions and Order Granting Motion to Expunge etc.

in this state,

(3) is not engaged in carrying on in this state any employment, trade, business or profession in which the motor vehicle will be used in this state, and

(4) prior to taking delivery, furnishes to the vendor any affidavit, statement or additional evidence, documentary or otherwise, which the tax commission may require to assure proper administration of the tax imposed under subdivision (a) of section eleven hundred five."

The debtor being of the belief that this section of the Tax Law applied to motor and sail boats did obtain from non-resident purchasers of its boats, proofs of non residence and an affidavit stating the foreign residence and that the boat was not intended for use within this state. This was done at the suggestion of a representative of the Tax Department and would be in compliance with Section 1117 (a) (4) of the Tax Law.

Subsection (c) of Section 1117 of the Tax Law states that the term "motor vehicle" for the purpose of that section, "xxx shall include a motor vehicle as defined in section one hundred twenty-five of the Vehicle and Traffic Law xxx."

Section 125 of the Vehicle and Traffic Law defines "motor vehicle" as:-

"Every vehicle operated or driven upon a public highway which is propelled by any power other than muscular power, except xxx."

It is clear that the boats manufactured and sold by the debtor are propelled either by wind, motor and wind

Findings, Conclusions and Order Granting Motion to Expunge etc.

or either power but not by muscular power. A public "highway" is defined in Webster's Third New International Dictionary 1966 as:-

"a road or way on land or water that is open to public use as a matter of right whether or not a thoroughfare xxx."

Black's Law Dictionary, De Luxe Fourth Edition, defines "highway" as:-

"The generic name for all kinds of public ways, whether carriage-ways, bridle-ways, foot-ways, bridges, turnpike roads, railroads, canals, ferries or navigable rivers." (citing cases)

x x x x x x x x x

"There is a difference in the shade of meaning conveyed by two uses of the word. Sometimes it signifies right of free passage, in the abstract, not importing anything about the character or construction of the way. Thus, a river is called a "highway"; and it has been not unusual for Congress, in granting a privilege of building a bridge, to declare that it shall be a public highway."

Thus we must conclude that (1) sail boats are taxable under Section 1105 of the Tax Law of the State of New York as "tangible personal property"; that Section 1117 of the Tax Law which grants tax exemptions to nonresidents on a purchase of a motor vehicle applies with equal force to sales of sail and motor boats; that a body of water (the Long Island Sound) is a "highway."

The exhibits of the parties show the claim filed by the Tax Commission covers the period from December 1, 1969, through August 31, 1974. The debtor moved to amend its

objection to the claim by alleging that part of the claim covered a period of more than three years prior to the date of the filing of the petition and is barred pursuant to Section 17a of the Bankruptcy Act. This section provides that the bankrupt, on discharge, is released from "xx (1) taxes which become legal and owing by the bankrupt to the United States or any State or any subdivision thereof within three years preceding bankruptcy." The motion to amend was granted. (s.m. p. 73)

It is clear that the debtor sold its boats with delivery to nonresidents by debtor's trucks, common carriers, unlicensed truckers and by water (sailaway). The State Tax Commission has deemed sales to nonresidents whose boats were carted away by licensed common carriers to be exempt from sales tax but has rejected the other forms of delivery to nonresidents as tax exempt.

The facts are found as follows:-

1. The debtor filed a petition for arrangement herein on the 14th day of November, 1974, and has been operating as debtor-in-possession since said date.

2. On April 17, 1975, the Sales Tax Bureau of the Department of Taxation and Finance of the State of New York filed a claim for sales taxes in the sum of \$398,535.40.

3. Thereafter, the debtor, alleging nothing due to the State of New York for sales taxes filed a petition and notice of motion to expunge and disallow said claim and the State Tax Commission undertook to re-examine the books

and records of the debtor and as a result thereof filed an amended sales tax claim in the principal sum of \$151,524.92 and interest thereon in the sum of \$15,302.84 making a total claim in the sum of \$166,827.76.

4. The parties stipulated that the objection to the claim of \$398,535.40 will apply to the amended claim in the sum of \$166,827.76 with the same force and effect as to the original claim.

5. The amended claim covers a period from 2/28/70 through 8/31/74, a span of more than three years prior to the filing of the petition herein.

6. The debtor is in the business of manufacturing and selling sail and motor boats with plant and offices at Huntington, New York. These boats are not propelled by muscular labor.

7. The debtor sells its boats to domestic and non-resident persons. The non-resident customers reside throughout these United States.

8. Delivery of the boats to nonresidents are made by debtor's trucks, common carriers, unlicensed carriers and by delivery in the Long Island Sound (sailaway).

9. The State Tax Commission has allowed an exemption to the debtor from payment of sales taxes on all sales made to nonresidents whose boats were hauled away from debtor's premises by licensed common carriers or the debtor but has refused an exemption on all sales where boats were hauled

Findings, Conclusions and Order Granting Motion to Expunge etc.
away by unlicensed carriers and those sales where delivery was made by water (sailaway).

10. In all cases of delivery of boats to nonresidents the debtor obtained from the purchaser a certificate showing his place of residence out of state (Ex. 2) to which was attached a photocopy of his out-of-state driving license. Tax Law, Sec. 1117 (a) (4).

11. The parties stipulated that although the sales of boats to nonresidents over a period of four to five years numbered about two hundred, the sale to Dominic Belluso and the documents indicating proof that he is a nonresident was the same for all out of state purchasers whether delivered by carrier, unlicensed common carrier or sailaway. (s.m. p. 34)

12. The "sailaway" delivery to nonresidents was made by placing the boat in Huntington Bay, adjacent to which debtor had its plant, or some convenient body of water, and sailing the same (by sail or motor) to the middle of the Long Island Sound where delivery of the boat would be made to the non-resident purchaser. This type sail delivery also acted as a "shake down" cruise.

In conclusion, I find that the debtor is entitled to a tax credit or reduction of the sales tax claim filed by the State Tax Commission for all sales made to nonresidents as indicated above and direct that the State Tax Commission re-compute the tax, if any, owing by the debtor for sales made within three years of the filing of the petition

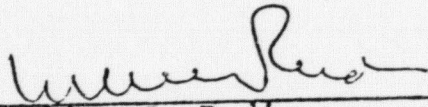
Findings, Conclusions and Order Granting Motion to Expunge herein to nonresidents. An amended claim, if any, shall be filed by the State Tax Commission for any tax found to be due to it by the debtor within sixty days from date and upon failure to do so, it shall be deemed to have no claim against debtor for sales taxes.

It is so

Ordered.

Dated: Westbury, New York

May 17, 1977



William J. Rudin
Bankruptcy Judge

MEMORANDUM AND ORDER OF HON. GEORGE C. PRATT, U.S.D.J. REVERSING DECISION
OF HON. WILLIAM J. RUDIN, BANKRUPTCY JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - x

In the Matter of

SEAFARER FIBERGLASS YACHTS, INC.,

Bankrupt.

DOCKET NO. 77 C 1120

In Bankruptcy 77 B 1532

MEMORANDUM AND ORDER

- - - - - x

PRATT, J.

Is a sailboat a motor vehicle? That is the question posed in this appeal by the New York State Department of Taxation and Finance, Sales Tax Division ("State") from, a May 17, 1977 order of the Bankruptcy Court, Rudin, J., upholding the bankrupt debtor's ("Seafarers") objections to certain sales tax claims by the State.

Seafarers is a New York corporation engaged in the business of designing, manufacturing and selling fiberglass boats. The State's claim, for unpaid sales taxes, which amounted to \$166,827.76 after several adjustments and stipulations between the parties, arises from Seafarers' sale of sailboats to out-of-state residents over a four and a half year period. Seafarer had previously filed a petition for bankruptcy on November 14, 1974.

Memorandum and Order of Hon. George C. Pratt, U.S.D.J.

Section 1105(a) of New York's tax law imposes a retail sales tax on "tangible personal property", a term which ordinarily would include the boats sold by Seafarer. However, Tax Law §1117(a)(1) exempts "motor vehicles" from that tax when the purchaser taking delivery is a nonresident of New York. The primary question then, which was decided affirmatively by the Bankruptcy Judge, is whether or not Seafarers' sailboats fall within the definition of "motor vehicle". If they do, then the sales of these sailboats would be exempt from the New York retail sales tax.

The tax statute's definition of "motor vehicle" adopts that contained in NY Vehicle and Traffic Law §125: "Every vehicle operated or driven upon a public highway which is propelled by any power other than muscular power * * *." The Bankruptcy Judge determined, correctly of course, that the boats sold to the out-of-state customers were not propelled by muscular power. Turning to the public highway side of the definition, he relied on Webster's Third International Dictionary and Black's Law Dictionary, De Luxe Fourth Edition, to conclude that a body of water (the Long Island Sound) is a "highway" for purposes of characterizing Seafarers' sailboats as motor vehicles under §125, thus

Memorandum and Order of Hon. George C. Pratt, U.S.D.J.

qualifying them for the retail sales tax exemption under NY Tax Law §1117(a)(1). Closer reading of these and other New York statutes, however, reveals that the Bankruptcy Judge's conclusions rest on uncertain ground.

The Vehicle and Traffic Law's definition of "motor vehicle" contemplates a vehicle which is operated or driven on a "public highway". While it is true that in both general and legal usage the term "highway" may sometimes include any route of travel, even on a body of water, the term "public highway" is used here in a comprehensive "Vehicle and Traffic Law" enacted by the New York legislature. Consequently, whether or not the legislature intended to include boats within its concept of "motor vehicles" operated on a "public highway" can best be determined from the very statute in which those terms are used, particularly when, as here, the legislature has undertaken to define its own terms. Analysis of the definitions sections of the Vehicle and Traffic Law demonstrate solidly that the legislature never intended the terms "highway" or "public highway" to include bodies of water such as Long Island Sound.

1. Section 134 of that statute defines "public highway" as "[a]ny highway, road, street, avenue, alley,

Memorandum and Order of Hon. George C. Pratt, U.S.D.J.

public place, public driveway or any other public way." In turn, "highway" is defined as "[t]he entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular traffic." Id. §118. The definition for "street" is identical to that of "highway". Id. §148.

2. Not only do the foregoing definitions fail to suggest bodies of water, but these and many other definitions in the statute would become greatly distorted, even ludicrous, if the term "highway" in the Vehicle and Traffic Law were to be read as including waterways, and the term "motor vehicles" as including boats. See, e.g., "bus" §104, "business district" §105, "chauffeur" §106, "crosswalk" §110, "curb" §111, "driver" §113, "driveway" §114, "intersection" §120, "operator" §127, "residence district" §138, "roadway" §140, "shoulder" §143a, "sidewalk" §144, "slope" §144a, "through highway" §149, "traffic" §152, and "traffic control devices" §153.

3. Classification of boats as motor vehicles would, contrary to the consistent practice of the state, bring them within the requirements of the Vehicle and Traffic Law's Article 5 governing periodic inspections, Article 6 requiring

Memorandum and Order of Hon. George C. Pratt, U.S.D.J.

insurance or other financial security, Article 9 relating to equipment of motor vehicles, Article 10 limiting the length, width and weight of motor vehicles, Title IV governing registration of motor vehicles, Title V requiring licenses for operators of motor vehicles, Title VI relating to accidents and accident reports, and Title VII prescribing the rules of the road.

4. Had the legislature intended to include rivers, lakes, streams, canals, Long Island Sound and the ocean as public highways, and boats operated thereon as motor vehicles, surely it would have mentioned those marine terms somewhere in the lengthy Vehicle and Traffic Law, and also provided for regulating their special problems of equipment, operation, safety and traffic. Yet, with one exception discussed below, the entire Vehicle and Traffic Law makes no mention of boars or waterways. Moreover, a statutory scheme for regulating boats which parallels to some extent the provisions of the Vehicle and Traffic Law's regulation of vehicles which traverse the land is to be found, not surprisingly, in the state's Navigation Law.

5. In 1973 the legislature did add a new Article 48 to the Vehicle and Traffic Law requiring registration of

Memorandum and Order of Hon. George C. Pratt, U.S.D.J.

"motorboats". This registration process, previously embodied in §§11, 71, 71a and 71b of the Navigation Law, was transferred by Chapter 839 of the Laws of 1973 from the Office of Parks and Recreation to the Department of Motor Vehicles. Nothing in the transfer legislation suggests any intent to reclassify boats as motor vehicles, the apparent reason for the change being one of governmental efficiency in the registration process.

6. The term "motorboat" in the new Article 48 was specifically defined in Vehicle and Traffic Law §2250 as "any mechanically propelled vessel". The term "vessel" was in turn defined as "every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on water". Thus, the legislature could and did use clear language when it sought specifically to identify boats and their special characteristics. Its failure to use similar terms elsewhere in the Vehicle and Traffic Law indicates an intent to exclude boats from its definition of motor vehicle.

7. The legislature's enactment of separate articles for registration of "motorboats" (Article 48) and of "motor vehicles" (Article 14) reinforces the conclusion that the

Memorandum and Order of Hon. George C. Pratt, U.S.D.J.

latter term was not intended to include the former.

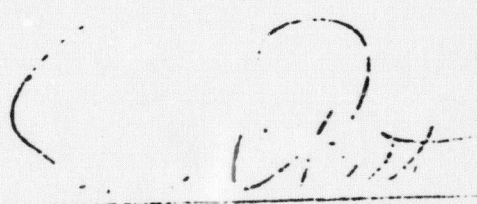
8. Finally, in §1115(a)(18) of the Tax Law itself, the legislature has referred to "motorboats" and "motor vehicles" as separate, not similar types of property.

The decision of the Bankruptcy Judge must therefore be reversed, because Seafarers' sailboats, within the meaning of §125 of the Vehicle and Traffic Law, are not motor vehicles and therefore whose motor vehicle sales are exempt under §1117(a) of the Tax Law.

Other problems remain with respect to (a) whether any bar is posed by the statute of limitations, and (b) whether there is any tax liability for the sailaway deliveries.^{*/} These issues require more in-depth consideration from a trial court where the pertinent facts can be developed and enlarged on a more complete record. Consideration of these issues is therefore remanded to the Bankruptcy Court pursuant to Bankruptcy Rule §10.

SO ORDERED.

Dated: Westbury, New York
September 1, 1977.



GEORGE C. PRATT
U. S. DISTRICT JUDGE

^{*/} One method of delivery was "sailaway", by which the sailboat was delivered to the customer in the middle of Long Island Sound, assumedly beyond New York jurisdiction.

77a
NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NOTICE OF APPEAL

-----X
In the Matter of

SEAFARER FIBER GLASS YACHTS, INC.

Debtor

-----X

Docket No. 77 Civ. 1190
(Pratt)

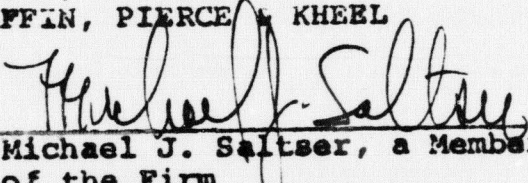
In Proceedings for an
Arrangement
74B1532

Notice is hereby given that Seafarer Fiber Glass Yachts, Inc., debtor above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the memorandum and order of the Hon. George C. Pratt, United States District Judge, entered in this action on the 2nd day of September, 1977 reversing the decision of the Hon. William J. Rudin, Bankruptcy Judge, dated May 17, 1977, which had sustained the debtor's objections to the amended claim filed in the Proceedings for an Arrangement by the State of New York, Department of Taxation and Finance, Sales Tax Bureau.

New York, New York
September 30, 1977

BATTLE, FOWLER, LIDSTONE,
JAFFIN, PIERCE & KHEEL

By


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of the Firm
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of New York
Attorney for Claimant, The
State of New York, Department
of Taxation and Finance,
Sales Tax Bureau
2 World Trade Center
New York, N.Y. 10047
Att: Paul Dahlman, Esq.

two(2)

27th Appending is hereby
December 1977

Appellee

Low Lefkowitz